

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 MATTHEW SPONER,)

4 Plaintiff,)

5 vs.)

6 EQUIFAX INFORMATION SERVICES,)
7 LLC and WELLS FARGO BANK, N.A.,)

8 Defendants.)

No. 3:17-cv-02035-HZ

August 28, 2019

Portland, Oregon

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14 **TRIAL - DAY 2**

15 TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE MARCO A. HERNANDEZ

17 UNITED STATES DISTRICT COURT JUDGE
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Sponer - X

P R O C E E D I N G S

(The Court, counsel, the parties, and the jury reconvene.)

THE COURT: Good morning. Welcome back. Please be seated.

Mr. Sponer, you need to retake the stand, please. You are still under oath.

(The witness retakes the witness stand.)

THE COURT: You may proceed.

MATTHEW SPONER

called as a witness in his own behalf, having been previously duly sworn, is examined and testifies as follows:

CROSS-EXAMINATION

BY MR. PETERSON: (continuing)

Q. Good morning, Mr. Sponer.

I want to take a quick look at Exhibit No. 2. It should flash up on the screen. And on the second page of Exhibit 2 there is a list of addresses. This was the letter that Mr. Charne sent to Wells Fargo in October of 2016. There's a list of addresses there.

And I just have a quick question. The first one listed, it says 2008, and it is 100 Harbor Drive in San Diego. Do you see that?

Sponer - X

1 A. Yes.

2 Q. And you stopped using that address in 2008; is that
3 correct?

4 A. I believe so.

5 Q. And you don't currently use that address for anything?

6 A. No.

7 Q. Thank you.

8 All right. Exhibit No. 10 -- and you talked about
9 this yesterday as well. This is the identity theft victim's
10 complaint and affidavit. And I just have a couple of
11 questions for you on this.

12 Do you know how long, approximately, it took you to
13 complete this identity theft affidavit?

14 A. It was difficult, because I -- oh, sorry. I'll answer
15 shorter.

16 No. I'm sorry, I don't.

17 Q. Ten hours?

18 A. I don't remember.

19 Q. No recollection of how long it would have taken?

20 A. Yeah. I don't want to guess. I mean, I can add up in my
21 head what each step --

22 Q. What steps did you take to complete this?

23 A. I had to collect all the information. I had to go to the
24 FTC website and find it in the first place, do the
25 PDF -- like, you know, punting the fonts over and things like

Sponer - X

1 that. And I had to get it notarized.

2 I'm sorry. This isn't a complete list of steps.

3 Q. Do you believe the process was slowed down because you
4 were in the South Pacific at the time?

5 A. I was in New Zealand when I did this, yes.

6 Q. And do you believe the process was slowed down because of
7 that?

8 A. You know, I'm not sure, because I had Internet, and it was
9 mostly Internet and computer stuff. So, no, I don't agree
10 with that.

11 Q. If you could turn to page 8 of 9, or we'll turn to it for
12 you. Sorry.

13 That's your signature on this page, isn't it,
14 Mr. Sponer?

15 A. Yes.

16 Q. And what date did you sign this?

17 A. I'm not sure, but it says January 18th, 2017.

18 Q. Thank you.

19 Exhibit No. 11, this is your January 19th letter to
20 Wells Fargo. Do you recall how long it took you to draft this
21 letter?

22 A. No.

23 Q. You testified yesterday, I believe, that this was
24 primarily a form letter, based on a form you found on the
25 Internet; is that correct?

Sponer - X

1 A. Yes.

2 Q. And I'm going to refer to the numbers on the bottom of the
3 page. This total exhibit is 39 pages. And starting on page 3
4 is a copy of your identity theft affidavit.

5 Is this the same affidavit that we just looked at as
6 Exhibit 10?

7 A. I -- I'm not sure.

8 Q. Well, let's turn to page 9 of the exhibit. And this has
9 your signature dated January 18th, 2017.

10 I'm sorry. Page 10 of the exhibit, January 18th,
11 2017, do you see that?

12 A. Yes.

13 Q. And that's the same date we looked at previously?

14 A. Yes.

15 Q. So it's your understanding this is the same affidavit?

16 A. I had an electric -- an electronic copy. So I don't know
17 exactly the same or --

18 Q. And moving forward, the next exhibit in this is the
19 sheriff's report. And how long did it take you -- as far as
20 efforts that you made, how long did it take you to obtain the
21 sheriff's report, the police report?

22 A. It was pretty quick because my lawyer, Mr. Charne, had
23 e-mailed it to me.

24 Q. And then the last attachment here is the notice to
25 furnishers, and that starts on page 36 of the exhibit. And

Sponer - X

1 the notice to furnishers, that's something you also obtained
2 off the Internet, isn't it?

3 A. Yes.

4 Q. And was that something that you -- I believe you testified
5 yesterday that was something you knew to include because that
6 was on the FTC website; is that right?

7 A. Yes. This document was included in there, yeah. Yes.

8 Q. Now, it's true, isn't it, that about this same day,
9 somewhere in mid-January of 2015, you sent virtually identical
10 letters to six other creditors, isn't it?

11 A. I believe so.

12 Q. And do you recall, you sent a letter to an entity that was
13 collecting on behalf of Verizon, didn't you?

14 A. I'm sorry. I don't.

15 Q. Well, let's look at Exhibit 527. Do you recognize
16 Exhibit 527?

17 MR. SOLA: Your Honor, we were not provided with this
18 exhibit.

19 THE CLERK: It's listed as an impeachment exhibit.

20 THE COURT: Okay. Do you want to approach for just a
21 second?

22 (The Court and counsel confer off the record.)

23 BY MR. PETERSON: (continuing)

24 Q. Okay. Mr. Sponer, Exhibit 527, this appears to be a
25 letter dated January 10th from you to McCarthy & Burgess

Sponer - X

1 regarding a Verizon wireless account. Do you recall writing
2 this letter?

3 A. No.

4 Q. On the second page of this exhibit, is that your
5 signature --

6 A. Yes.

7 Q. -- and a picture of your passport?

8 A. Yes.

9 Q. Do you have any reason to believe you didn't write this
10 letter?

11 A. I just don't remember at all.

12 Q. And on or around this same time frame, you also wrote a
13 letter to Best Buy, didn't you?

14 A. I don't remember every letter that I wrote.

15 Q. So if we can look at Exhibit 528, that's a letter from you
16 to Best Buy fraud department dated January 18th. Do you see
17 that?

18 A. Yes.

19 Q. And the content of this letter is virtually the same as
20 the letter you sent to Wells Fargo, isn't it?

21 "I'm a victim of identity theft. Enclosed is a copy
22 of the police report." Do you see that?

23 A. Yes.

24 Q. And do you have any reason to believe you didn't write
25 this letter?

Sponer - X

1 A. No.

2 Q. And you also, in this same time frame, around
3 January 18th, 19th, you sent a letter to Home Depot, didn't
4 you?

5 A. I don't remember every letter.

6 Q. Exhibit 529, and this is a letter dated January 19th from
7 you to Home Depot with, again, virtually the same statements.
8 The first paragraph starts with "I am a victim of identity
9 theft"; the second paragraph, "Enclosed is a copy of the
10 police report."

11 Do you have any reason to believe you didn't write
12 this letter?

13 A. No.

14 Q. And did you also -- do you recall writing a letter to
15 Kohl's at this time frame?

16 THE COURT: Hang on a second.

17 These exhibits I think have been -- they're not
18 showing up in front of the jury. I don't know whether you
19 want them to be showing up in front of the jury or not.

20 MR. PETERSON: I would like that, Your Honor. I was
21 going to get through this and then offer them. I don't know
22 how you handle these type of exhibits.

23 THE COURT: That's fine. Your system works for that.

24 So take them off the screen, please. They will be
25 displayed later on.

Sponer - X

1 MR. PETERSON: Well, I would like to offer them as I
2 go, then.

3 THE COURT: Okay. Is 529 up?

4 MR. PETERSON: Yes, Your Honor. That would be 527
5 through 529 offered.

6 THE COURT: They are received.

7 You may display them.

8 MR. PETERSON: And, Your Honor, while we're waiting
9 for that, I intend to offer 530, 531, 532 as well.

10 THE COURT: We'll wait until we get to those.

11 (There is a brief pause in the proceedings.)

12 THE COURT: They're up.

13 MR. PETERSON: Thank you.

14 BY MR. PETERSON: (continuing)

15 Q. Okay. Mr. Sponer, on the screen is Exhibit 529, and this
16 is a letter to Home Depot.

17 And then moving to Exhibit 530, Exhibit 530 is,
18 again, the same form letter, virtually the same, this one to
19 Kohl's department store. Do you recall writing that letter?

20 A. I don't remember most letters.

21 Q. Do you have any reason to believe you didn't send this
22 letter?

23 A. No.

24 MR. PETERSON: Offer Exhibit 530.

25 THE COURT: Received.

Sponer - X

1 BY MR. PETERSON: (continuing)

2 Q. And, Mr. Sponer, what's been marked as Exhibit 531, do you
3 recall writing a letter to Macy's?

4 A. Yes, I do.

5 Q. What do you recall about that letter?

6 A. I remember that I wrote a letter to Macy's.

7 Q. Is this that letter?

8 A. I believe so.

9 MR. PETERSON: Offer 531.

10 THE COURT: Any objection to 531?

11 MR. SOLA: No, Your Honor.

12 THE COURT: It's received.

13 BY MR. PETERSON: (continuing)

14 Q. And do you recall writing a letter to Office Depot in this
15 same time frame, January 19th?

16 A. No. I don't have, like, in my memory every company and
17 date.

18 Q. Exhibit 532 is a letter dated January 19th from you to
19 Home Depot, again with the same information, and --

20 THE COURT: Excuse me. You said Home Depot.

21 MR. PETERSON: I'm sorry. Office Depot is this one.

22 Thank you, Your Honor.

23 BY MR. PETERSON: (continuing)

24 Q. Do you have any reason to believe you didn't write
25 Exhibit 532?

Sponer - X

1 A. No.

2 MR. PETERSON: Offer 532.

3 THE COURT: Any objection to 532?

4 MR. SOLA: No, Your Honor.

5 THE COURT: Received.

6 BY MR. PETERSON: (continuing)

7 Q. Yesterday did I understand your testimony correctly that
8 you believed all of the other accounts, other than Wells
9 Fargo, were resolved quickly upon your sending a letter?

10 MR. SOLA: I'll -- well, let me object. I don't
11 think --

12 THE COURT: Overruled. He can answer the question.

13 THE WITNESS: I don't remember precisely what I said,
14 but yeah.

15 BY MR. PETERSON: (continuing)

16 Q. But that's not actually the case, is it, that all of your
17 other accounts were resolved quickly?

18 A. I don't think I said all.

19 Q. Okay. So the answer to my question is that not all of the
20 accounts were resolved quickly; is that correct?

21 A. Yes.

22 Q. These letters that you wrote on January 19th, these were,
23 generally speaking, to the creditors that you listed on your
24 fraud affidavit; is that correct?

25 A. I believe so.

Sponer - X

1 Q. And you don't actually know how quickly any of those
2 creditors removed their accounts from your credit report, do
3 you?

4 A. I don't agree with that statement, no. I mean -- I'm
5 sorry. What timeline?

6 Q. Well, I'm just asking you if you know how quickly these
7 creditors removed their accounts, the six creditors, other
8 than Wells Fargo, that you sent letters to in January of 2017.

9 A. No. I did not memorize the dates that they took it off my
10 credit report.

11 Q. Do you recall obtaining a copy of your credit report any
12 time between February of 2017 and August of 2017?

13 A. I'm not sure, but I used a -- like a website where you
14 check.

15 Q. You didn't print any copies of those at any time?

16 A. No, I don't think so.

17 Q. What website was that?

18 A. I believe it was TransUnion, but I'm not sure.

19 Q. So as you sit here today, you don't actually know when
20 certain debts came off your credit report; is that true?

21 A. Not with precision.

22 Q. Mr. Sponer, if we could look at Exhibit No. 12 -- and you
23 spoke with Mr. Sola about this letter yesterday, and I believe
24 you testified that it was understandable that large companies
25 would -- I think your phrase that you used was that they would

Sponer - X

1 have computers and form letters. Is that what you testified
2 to, that it's understandable?

3 A. Yes, to an extent.

4 Q. So I understand that at the time you received this, you
5 were very frustrated by the identity theft situation. But you
6 believed at the time, on February 15th or about that, when you
7 received this, you believed that receiving this type of letter
8 from Wells Fargo was understandable, didn't you?

9 A. No.

10 Q. Well, you testified yesterday that form letters like this
11 were understandable. Is your testimony different today?

12 A. It is not different.

13 Wells Fargo contacted the police. They talked to my
14 lawyer. They talked to the police. They got the car back
15 from them. To me it's understandable if I send a single
16 letter and it's just out of the blue and there's a delay.

17 Q. You testified, I believe, yesterday that this letter
18 caused you shock and fear. Do you remember that testimony?

19 A. Yes.

20 Q. What did you do after receiving this letter on
21 February 15th of 2017 to address your shock and fear?

22 A. I'm not sure.

23 Q. There's a contact phone number listed on here, on the last
24 line; is that correct?

25 A. Yes.

Sponer - X

1 Q. Did you call that number?

2 A. No.

3 Q. If I could have you look at Exhibit 13 -- and this is your
4 letter to Wells Fargo dated August 18th of 2017. This was
5 your next communication with Wells Fargo following the
6 February 2017 letter they sent to you, wasn't it?

7 A. No.

8 Q. What communication did you have between February 15th,
9 2017, and August 18th, 2017?

10 A. I had several -- I don't know how many accounts with them,
11 so there was normal communications about those.

12 Q. Thank you for the clarification.

13 So those were related to your bank accounts, credit
14 card account, but not related to the identity theft, correct?

15 A. Yes.

16 Q. And this August 18th letter, it does vary some from your
17 January letters, from the letters about eight months earlier,
18 but I believe you testified yesterday that this is also based
19 primarily on a form you found on the Internet; is that true?

20 A. It's based on the previous letter.

21 Q. And how long did it take you to write this letter?

22 A. I'm not sure, but there's the mechanical act of writing
23 and there's the research part, figuring out what to write.

24 Q. And you said this was based on the prior letter you had
25 already written, correct?

Sponer - X

1 A. Yes.

2 Q. And then how long did it take you to compile the exhibits
3 to this letter?

4 A. I'm not aware -- I don't remember specifically what
5 exhibits are with this letter.

6 Q. Okay. So the exhibits you attached with this letter,
7 starting on page 4 of the exhibit, this is the letter that
8 Mr. Charne sent on your behalf. So you already had a copy of
9 this, correct?

10 A. Yes.

11 Q. And the next exhibit is on page 7, and this is Wells
12 Fargo's letter to you of February 15th. So you already had a
13 copy of this, correct?

14 A. Yes.

15 Q. And on page 8 through page 16, that's a fraud affidavit,
16 or identity theft victim's complaint and affidavit. Is this
17 the same one you originally did in January of 2018?

18 A. I believe so. I mean, it was files on my computer.

19 Q. Okay. Let's look at page 15 of Exhibit 13. And that
20 shows your signature dated January 18th, 2017, correct?

21 A. Yes.

22 Q. And that was the same date as the prior affidavit?

23 A. Yes.

24 Q. And the next attachment to this letter is found on page 17
25 of this exhibit, and that's the police report. You already

Sponer - X

1 had a copy of that, correct?

2 A. Yes.

3 Q. And then the last exhibit, again, is the notice to
4 furnishers. And you had previously obtained that and sent it,
5 correct?

6 A. Yes.

7 Q. And on or about August 18th, in the same general time
8 frame, you recall sending nearly identical letters to six
9 other creditors, don't you?

10 A. The letters to other creditors were not identical.

11 Q. And that's correct. They have some differences,
12 certainly.

13 If I could have you look at Exhibit 533 -- and this
14 is a letter to an entity called Caine & Weiner.

15 THE COURT: This particular letter should not yet be
16 displayed to the jury.

17 Thank you. Go ahead.

18 BY MR. PETERSON: (continuing)

19 Q. This is a letter from you dated August 16th, to Caine &
20 Weiner, regarding Progressive Insurance. Do you see that?

21 A. Yes.

22 Q. Do you have any reason to believe you did not send this
23 letter?

24 A. No.

25 Q. And the first paragraph says, "I'm a victim of identity

Sponer - X

1 theft." The second paragraph starts with "Enclosed is a copy
2 of the police report."

3 Would you agree that that language is also found in
4 your August 18th letter to Wells Fargo?

5 A. Yes. But Wells Fargo had additional information.

6 MR. PETERSON: I'll offer Exhibit 533.

7 THE COURT: Any objection?

8 MR. SOLA: No, Your Honor.

9 THE COURT: Received.

10 BY MR. PETERSON: (continuing)

11 Q. And, Mr. Sponer, on the second page of this there's a
12 screenshot of what appears to be a portion of a credit report.
13 Do you see that?

14 THE COURT: Wait a second. Once I say, "Received,"
15 you have to ask to have it published to the jury. Otherwise,
16 they're not going to see it.

17 MR. PETERSON: Your Honor, may we please publish that
18 to the jury.

19 Thank you.

20 BY MR. PETERSON: (continuing)

21 Q. Mr. Sponer, on the second page of this exhibit, 533,
22 there's a screenshot, what looks to me to be a screenshot of a
23 credit report entry. Do you see that?

24 A. Yes.

25 Q. And you also sent a similar credit report screen entry to

Sponer - X

1 Wells Fargo in the same time frame, correct?

2 A. Yes.

3 Q. And on this particular one, on Exhibit 533, it says
4 "placed for collection." Do you see that?

5 A. Yes.

6 Q. And is it your understanding that Caine & Weiner is a
7 collection agency?

8 A. Yes.

9 Q. You recall sending a letter to an entity known as Ad Astra
10 Recovery Services around this time frame, don't you?

11 A. I remember the company name, but I don't remember the
12 letter.

13 Q. Exhibit 534 is a letter to Ad Astra regarding a fraudulent
14 account at Speedy Cash, dated August 16th. Do you have any
15 reason to believe you didn't write this letter?

16 A. No.

17 MR. PETERSON: Offer Exhibit 534.

18 MR. SOLA: No objection.

19 THE COURT: Received.

20 MR. PETERSON: And please publish to the jury.

21 BY MR. PETERSON: (continuing)

22 Q. And would you agree this is very similar to the other
23 letters you sent in this time frame?

24 A. Yes, except for the Wells Fargo one.

25 Q. And when you say, "except for the Wells Fargo one," that's

Sponer - X

1 because you listed a little bit more information, a couple of
2 extra paragraphs in the Wells Fargo one?

3 A. Yes.

4 Q. And, obviously, each of these has, for example, a
5 different screenshot because you're dealing with a specific
6 debt, correct?

7 A. Yes.

8 Q. And in this time frame, August 16th of 2017, you were
9 still having trouble with Home Depot, weren't you?

10 A. I don't remember the timeline.

11 Q. If I could have you look at Exhibit 535 -- and this is a
12 letter dated August 16th to the Home Depot fraud department,
13 and it says "second notice" on that. Do you see that?

14 A. Oh, yes. I remember this letter now.

15 MR. PETERSON: Offer Exhibit 535.

16 MR. SOLA: No objection.

17 THE COURT: Received.

18 MR. PETERSON: Please publish.

19 BY MR. PETERSON: (continuing)

20 Q. Home Depot was difficult to get attention from, weren't
21 they?

22 A. I'm not sure how many letters they took. I believe it was
23 three.

24 Q. And in between January of 2017 and August of 2017, when
25 you sent this letter, did you have any communications with

Sponer - X

1 Home Depot regarding the fraudulent account?

2 A. I'm not sure. I mean, if it's in my computer --

3 Q. But you don't recall any communications?

4 A. No.

5 Q. And there was also a fraudulent Citibank account at this
6 time, wasn't there?

7 A. I'm not sure, because I think Citibank was the financier or
8 something. I'm not sure.

9 Q. If we could look at Exhibit 536 -- and this is a letter
10 dated August 16th to an entity known as JH Portfolio regarding
11 a Citibank account.

12 A. So I believe that some of the store credit cards, like
13 Home Depot and Office Depot and some of the other ones -- I
14 can't remember -- they would use Citibank. So sometimes it
15 was the same account.

16 Q. And you recall writing this letter?

17 A. Not specifically.

18 Q. In reviewing this exhibit, 536, including the second page
19 with your signature, do you have any reason to believe you
20 didn't send this letter?

21 A. No.

22 MR. PETERSON: Offer Exhibit 536.

23 MR. SOLA: No objection.

24 THE COURT: Received.

25 MR. PETERSON: Publish that to the jury as well, Your

Sponer - X

1 Honor?

2 BY MR. PETERSON: (continuing)

3 Q. Again, was it also your understanding that JH Portfolio
4 was a debt collection agency?

5 A. I believe so, yes.

6 Q. And there was also an issue with an AT&T account in this
7 time frame, wasn't there?

8 A. I don't remember an AT&T account.

9 Q. If I could have you look at Exhibit 537 -- and this is a
10 letter dated August 18th from you to an entity known as
11 Diversified Consultants regarding an AT&T Mobility account.
12 Does that refresh your memory?

13 A. I don't remember AT&T, but it looks like this is me, so --

14 Q. You have no reason to believe you didn't send this letter?

15 A. No.

16 MR. PETERSON: Offer Exhibit 537.

17 MR. SOLA: No objection.

18 THE COURT: Received.

19 MR. PETERSON: I ask that you publish it to the jury.

20 BY MR. PETERSON: (continuing)

21 Q. And, again, Diversified Consultants, did you understand or
22 you now understand that's a collection agency?

23 A. Yes.

24 Q. And at that same time frame that you sent something
25 to -- or sent this letter to Diversified Consultants, you also

Sponer - X

1 sent a letter directly to AT&T, didn't you?

2 A. Is that the exhibits you were just flipping through? I'm
3 lost.

4 Q. Let's take a look at Exhibit 538.

5 A. Okay.

6 Q. And that's a letter dated August 18th to the AT&T fraud
7 department regarding the AT&T Mobility account. Do you have
8 any reason to believe you didn't send this letter?

9 A. No. At this phase I learned to dispute, if it was both
10 a -- if it was a collection agency, to do it to the original
11 company and the collection agency at the same time.

12 MR. PETERSON: Offer Exhibit 538.

13 MR. SOLA: No objection.

14 THE COURT: Received.

15 MR. PETERSON: Please publish.

16 BY MR. PETERSON: (continuing)

17 Q. The Wells Fargo account was never placed with a collection
18 agency, was it?

19 A. I don't know.

20 Q. You don't recall it ever being placed with a collection
21 agency?

22 A. Many accounts were in collections. And the first notice
23 I'd get of them was -- I wasn't sure how long they'd been in
24 collections.

25 Q. In the documents you went through yesterday with Mr. Sola,

Sponer - X

1 there were no collection letters related to the Wells Fargo
2 account, were there?

3 A. That's correct.

4 Q. There was some discussion yesterday about the mailing of
5 this group of August 18th letters, and I believe your -- or
6 mid-August letters, and I believe your testimony was that you
7 lost the certified mail receipts; is that correct?

8 A. For a certain batch of them.

9 Q. And would that include these exhibits that we've just gone
10 through, 533 through 538, that you lost all those?

11 A. I don't remember.

12 Q. I'd like to turn to Exhibit 15. And I recognize that
13 there is -- in this Exhibit 15 there's some additional
14 information about your specific communications with Wells
15 Fargo. But, generally speaking, is this a form letter you
16 found on the Internet or based on that?

17 A. I'm not sure what "based" means, after you've changed it a
18 certain number of times.

19 Q. So you changed a letter that you found on the Internet?

20 A. I started with an original letter and then kept evolving
21 it.

22 Q. And when you say that, the original letter you wrote in
23 January of 2017, and it was sort of revised over time. Is
24 that your testimony?

25 A. Yes.

Sponer - X

1 Q. In the bottom page here -- and you spoke to Mr. Sola about
2 this yesterday. The bottom of the first page of this exhibit,
3 it says -- it discusses that you are not in the United States,
4 and it says you are sailing your yacht between the Caribbean
5 and New Zealand. And you testified that that was sort of an
6 exaggeration; is that right?

7 A. Yes. I used the word "yacht" instead of "sailboat."

8 Q. And how big is your sailboat, how many feet?

9 A. The waterline is 46 feet, and overall is 57 feet.

10 Q. Fifty-seven feet.

11 I'd like to look at the exhibits to this August 15th
12 letter -- I'm sorry, the November 3rd letter, Exhibit 15, the
13 exhibits here. And starting on page 4, there are some
14 additions to this.

15 I believe this is the first time you included your
16 passport information. Does that match your recollection?

17 A. I'm really not sure.

18 Q. Do you recall how long it took you to draft or create
19 these five pages related to your passport information?

20 A. I remember it was a project.

21 Q. All the information came directly out of your passport,
22 correct?

23 A. Yes.

24 Q. And the project included making some photocopies of some
25 pages?

Sponer - X

1 A. I remember scanning tables and stuff like that.

2 Q. So the first page of this, page 4, is that the table
3 you're referring to?

4 A. Yes.

5 Q. And then pages 5, 6, 7, and 8, is that the scanning you're
6 referring to?

7 A. Yes.

8 Q. And the next exhibit is the letter from Mr. Charne to
9 Wells Fargo. That starts on page 9. And that's something you
10 had before, correct?

11 A. Yes.

12 Q. And starting on page 14, the next exhibit is -- or the
13 next attachment, I should say, is the letter you received from
14 Wells Fargo on February 15th, correct?

15 A. Yes.

16 Q. And then the next attachment starts on page 15 of this
17 exhibit, and that's the identity theft affidavit. And that's
18 shown on page 22 of this exhibit. It shows the signature date
19 of January 18th, 2017. And that's the same one we've looked
20 at in the past, correct?

21 A. Yes.

22 Q. Now, why didn't you update the identity theft affidavit to
23 reflect current creditors showing on your report?

24 A. It didn't seem necessary.

25 Q. And then starting on page 24 of this exhibit, you attach

Sponer - X

1 or enclosed the police report again, correct?

2 A. Yes.

3 Q. And that's the same police report you had initially,
4 correct?

5 A. Yes.

6 Q. And then you enclosed the notice to furnishers that you
7 previously enclosed, and that starts on page 48, correct?

8 A. I don't see what page it's on.

9 Oh, yes.

10 Q. Thank you.

11 Would it surprise you to learn that between
12 November 2nd of 2017 and November 15th, you sent approximately
13 13 letters to creditors and credit reporting agencies other
14 than Wells Fargo?

15 A. I don't remember dates when letters were sent.

16 Q. In this time frame, early to mid November of 2017, you
17 were still dealing with many negative accounts, weren't you?

18 A. I'm not sure.

19 Q. Were you still -- at this time frame, you recall that you
20 were still dealing with Office Depot, don't you?

21 A. I'm not sure. I believe they took three letters, but I
22 don't know.

23 Q. I'm going to have you look at Exhibit 544. That's a
24 November 3rd letter to Office Depot, drafted by you, correct?

25 A. Yes.

Sponer - X

1 MR. PETERSON: I'll offer Exhibit 544.

2 MR. SOLA: No objection.

3 THE COURT: Received.

4 MR. PETERSON: Publish to the jury.

5 BY MR. PETERSON: (continuing)

6 Q. And you had been dealing with Office Depot since your
7 original letter in January of 2019. We looked at that
8 earlier, correct?

9 I'm sorry. January of 2017.

10 A. Oh, yeah.

11 Yes, but I think this was one of the Citibank ones.
12 There was one where it went to the wrong address, because they
13 were putting the wrong address on the credit report.

14 Q. And that -- if you look at what is the third paragraph
15 down that starts in bold, "I notified your collection
16 agency" -- do you see that?

17 A. Yes, I see it.

18 Q. So really, this says -- on the top in the "re" line it
19 says "second notice," but really you had been making efforts
20 with this one through the collection agency as well, correct?

21 A. I don't remember the timeline for this one.

22 Q. You wrote in here that you had been dealing with the
23 collection agency. You don't have any reason, as you sit here
24 today, to think that that was untrue, do you?

25 A. No.

Sponer - X

1 Q. And you were still dealing with Home Depot at this time
2 frame, too, weren't you?

3 A. Again, I never memorized the dates.

4 Q. And that's reasonable. You were dealing with a lot of
5 creditors.

6 If you could look at Exhibit 546 -- and this is a
7 letter from you to Home Depot, dated November 3rd. Do you see
8 that?

9 A. Yes.

10 Q. And it took several attempts to deal with Home Depot,
11 didn't it?

12 A. I don't want to misstate, but I think that's one of the
13 Citibank ones. I'm not sure.

14 Q. And we looked earlier. You had originally sent a letter
15 directly to Home Depot in January of 2017, correct?

16 A. I'm not sure, but that's my hazy memory of what went on
17 with that one.

18 Q. And your understanding, looking at this letter that's been
19 marked 546 --

20 MR. PETERSON: I'll offer 546.

21 MR. SOLA: No objection.

22 THE COURT: Received.

23 MR. PETERSON: And publish, please.

24 BY MR. PETERSON: (continuing)

25 Q. And if you look at this letter, your recollection is that

Sponer - X

1 Home Depot was still showing on your credit report at this
2 time frame. And did you also testify it's been in collection
3 at this time as well?

4 A. I'm not sure.

5 Q. I'll have you look at Exhibit 16. And this was dated the
6 same date that you sent Exhibit 15 to Wells Fargo. You also
7 sent this to a different part of Wells Fargo; is that correct?

8 A. That's -- that's what I remember, yes.

9 Q. And is your recollection that it included all the same
10 attachments that we've talked about before or most of them?

11 A. No. If you can turn the page --

12 Q. Sure.

13 A. Oh, yes. These types of letters the FTC said to attach
14 like a passport or, you know, a driver's license.

15 Q. And on that page that we're looking at below your picture,
16 there's a list of bullet points with the attachments. And
17 it's accurate, isn't it, that those are the same attachments
18 we looked at before?

19 A. Yes.

20 Oh, wait. I'm sorry. The very last attachment is
21 different between this letter and the dispute letter.

22 Q. Let's turn to page 38 of this exhibit, 38.

23 Is this the new enclosure you referenced?

24 A. Yes, for this type of letter.

25 Q. And this is something you obtained through the FTC,

Sponer - X

1 correct?

2 A. I believe so.

3 Q. And then Exhibit 17 is a letter from you to Equifax
4 related to the Wells Fargo dispute, correct?

5 A. Yes.

6 Q. And if I could have you turn to page 4 of this
7 exhibit -- and, again, that has bullet points that list the
8 attachments you included. Do you see that?

9 A. Yes.

10 Q. And this lists several different letters from Mr. Charne
11 to Equifax, correct?

12 A. Yes.

13 Q. So at the same time that -- well, let's look at those.

14 So turning to page 10 of this exhibit -- and that's a
15 letter dated October 18th from Mr. Charne to Equifax. Do you
16 see that?

17 A. Yes.

18 Q. And turning to page 18 of this exhibit, that's also a
19 letter from Mr. Charne to Equifax?

20 A. Yes.

21 Q. And looking at page 20, that's also a letter from
22 Mr. Charne to Equifax?

23 A. Yes.

24 Q. And I believe we hadn't seen those exhibits before, but
25 those are all letters that Mr. Charne wrote.

Sponer - X

1 You didn't have to do anything to write those
2 letters, correct?

3 A. No. I had to coordinate with him.

4 Q. Back in October of 2016, when you first -- when this issue
5 first arose?

6 A. Yes.

7 Q. Now, Exhibits 15, 16, and 17 were all letters that you
8 wrote -- well, I should back up.

9 Exhibits 15 and 16, those are both letters you wrote
10 to Wells Fargo or various departments at Wells Fargo, correct?

11 A. I didn't memorize the exhibit numbers.

12 Q. Okay. I believe you testified yesterday that Wells Fargo
13 didn't respond to your November 3rd letters. Did I understand
14 that correctly?

15 A. I remember that they didn't respond to the request for
16 records --

17 Q. Okay. Thank you.

18 A. -- on November 3rd.

19 Q. Okay. Thank you.

20 So Exhibit 18, this is a letter from Will Brady to
21 you, requesting a copy of your Social Security card that you
22 discussed yesterday.

23 I believe at some point yesterday you testified you
24 never knew who to contact at Wells Fargo. Did I understand
25 that correctly?

Sponer - X

1 A. I'm not sure that's correct, because there was a -- I
2 think there was a person's name on the January letter. I'm
3 not sure when I was writing to who or at what address.

4 Q. And if you look at Exhibit 18, right in the middle of the
5 page there's an address there with Mr. Brady's name and
6 address, correct?

7 A. Yes.

8 Q. And it also has his phone number and his direct extension,
9 correct?

10 A. Yes.

11 Q. And we talked about this last evening, just before we
12 finished, but that same information was in his October 26th
13 letter to you, correct?

14 A. Yes. Oh, I think so.

15 Q. I also believe you testified yesterday -- and correct me
16 if I'm wrong -- you testified that in all of 2017, up until
17 this letter, you never received a request from Wells Fargo for
18 your Social Security card. Am I remembering that correctly?

19 A. There's a difference between, like, received by e-mail and
20 actually opened and read.

21 Q. The October 26th, 2016 letter contained a request for a
22 copy of your Social Security card, didn't it?

23 A. Yes.

24 Q. And you testified in your deposition in this case that you
25 had received and read that letter, correct?

Sponer - X

1 A. Yes, but I'm not sure when I read it. When I arrived in
2 New Zealand, I had a lot of attachments from my lawyer. And
3 he sent the affidavits separately from the cover letter for
4 it.

5 Q. So you read some information from your lawyer, but not all
6 information? Is that what you're testifying to?

7 A. I'm not sure. I mean, there was a lot of attachments.

8 Q. But you do recall you did eventually read the
9 October 26th, 2016 letter, correct?

10 A. Yes.

11 Q. And if I could have you look at Exhibit 20 -- and this is
12 another one you discussed with Mr. Sola yesterday. And this
13 is an Equifax response, correct?

14 A. Yes.

15 Q. I just want you to look at page 4 of this. Right in the
16 middle of the page is a section or a heading that says
17 "Collection Agency Information." Do you see that?

18 A. Yes.

19 Q. Is it your understanding it shows that at this time --
20 November 30th, 2017 -- you had, according to Equifax, at least
21 one account that was in collection?

22 A. Yes, for \$93.

23 Q. And you testified earlier that you never -- that Wells
24 Fargo never assigned -- to your knowledge, Wells Fargo never
25 assigned your account to collections; is that right?

Sponer - X

1 A. I witnessed no actions from Wells Fargo, yeah.

2 Q. Did you receive any collection phone calls from Wells
3 Fargo on this account?

4 A. No.

5 Q. Did anyone else you know or any family members you know
6 receive any collection calls about this account?

7 A. I don't believe so.

8 Q. You received collection calls from other creditors, didn't
9 you?

10 A. Yes.

11 Q. Were those distressing to receive?

12 A. Yes.

13 Q. I'll have you turn to Exhibit 21. Do you recognize
14 Exhibit 21?

15 A. Yes.

16 Q. And this is a letter you received from Wells Fargo, an
17 e-mail or a letter you received from Wells Fargo?

18 A. I believe an e-mail.

19 MR. PETERSON: Offer Exhibit 21.

20 MR. SOLA: No objection.

21 THE COURT: Received.

22 MR. PETERSON: Publish.

23 BY MR. PETERSON: (continuing)

24 Q. And in this Exhibit 21, this is a letter to you related to
25 your communications with Dealer Services, requesting that they

Sponer - X

1 want to follow up with you, correct?

2 A. Yes.

3 Q. And in the bottom of that first paragraph, it says, "Wells
4 Fargo Dealer Services prefers to discuss personal and
5 account-specific follow-up by telephone rather than mail."

6 Do you see that?

7 A. Yes.

8 Q. And then in the next paragraph down, there's a phone
9 number and the name of an individual; and in the individual's
10 signature block is also her extension number. Do you see
11 that?

12 A. No, I don't notice -- I'm not sure what you mean.

13 Q. Sure. If you look, there's a signature, a signature block
14 for a person named Yakeeta B. Do you see that?

15 A. Oh, okay. I got confused. I thought you meant she signed
16 it in the shape of her extension --

17 Q. No.

18 Okay. In her signature block, below there's an
19 extension, isn't there?

20 A. Yes.

21 Q. And did you respond to this letter with a phone call?

22 A. No.

23 Q. And if we could look at Exhibit 22, this is your letter to
24 Mr. Brady, responding to his request for a Social Security
25 card, correct?

Sponer - X

1 A. Yes.

2 Q. Do you recall how long it took you to write this letter?

3 A. No.

4 Oh, I believe this is the one I sent to my attorney
5 to review, Mr. Charne. I'm not sure.

6 Q. As you sit here today, you don't recall how long it took
7 you to write this letter?

8 A. No.

9 Q. And this is the first time you informed Wells Fargo that
10 you didn't have a copy of your Social Security card, isn't it?

11 A. Yes.

12 Q. And if we could look at Exhibit 24, this is also another
13 response to an Equifax dispute, correct?

14 A. Yes.

15 Q. And on page 4 -- this is dated December 6th. On page 4,
16 this also shows a collection agency account, correct?

17 A. Yeah. I believe that's the same \$93 account.

18 Q. Are you aware that there are multiple credit reporting
19 agencies?

20 A. Yes.

21 Q. You're familiar with Equifax. We've seen a lot of their
22 documents. You're familiar with TransUnion?

23 A. Yes.

24 Q. And you're familiar with Experian?

25 A. Yes.

Sponer - X

1 Q. And did you regularly check those other credit reporting
2 agencies' credit reports?

3 A. The website I used would show me one of them. And then if
4 I paid \$45 or \$60, it would show me all three.

5 Q. And did you do that sometimes?

6 A. Yes.

7 Q. Did they always show the same thing?

8 A. No.

9 Q. It's true, isn't it, that, for example, in this general
10 time frame that TransUnion didn't show your Wells Fargo
11 account?

12 A. I don't remember.

13 Q. I'll have you look at Exhibit 524. And this is a credit
14 report with your name on it, correct?

15 A. I'm having trouble finding it.

16 Q. Right towards the top, below "Personal Information," it
17 says, "Names Reported."

18 A. Oh, yes.

19 Q. And right above that, the last four digits of your Social
20 Security number, correct?

21 A. Yes.

22 Q. And are those -- it says, "Addresses Reported." Are those
23 addresses that were, at some point in time, associated with
24 you?

25 A. I'm not sure how some of them are associated.

Sponer - X

1 Q. Do you have any reason to believe that this isn't your
2 credit report?

3 A. No.

4 MR. PETERSON: Offer Exhibit 524.

5 MR. SOLA: No objection.

6 THE COURT: Received.

7 MR. PETERSON: Publish, please.

8 BY MR. PETERSON: (continuing)

9 Q. And at the bottom of page 1 -- and this is -- this is
10 dated November 10th, 2017, correct?

11 A. Yes.

12 Q. And on the bottom of page 1 it says, "Adverse Accounts,"
13 correct?

14 A. Yes.

15 Q. And in that section, is there any -- and then continuing
16 on to page 2 --

17 A. Oh, there's Citibank on Home Depot. I'm sorry.

18 Q. Okay. Let's go back to page 1.

19 That's what you were referring to earlier, the CBNA,
20 the Citibank, Home Depot?

21 A. Yes.

22 Q. And that's still showing up as an adverse account here?
23 At least, it's in the heading that says "Adverse Accounts"?

24 A. Oh, yes. Yeah.

25 Q. And then if you turn to page 2, the next thing is

Sponer - X

1 "Satisfactory Accounts." Do you see that?

2 A. Yes.

3 Q. So based on the first two pages here, what's shown as
4 adverse accounts are -- there's no Wells Fargo account there,
5 correct?

6 A. Yes.

7 Q. So is it accurate that sometimes there can be differences
8 between what the various credit reporting agencies actually
9 report?

10 A. I'm sorry. Actually report, is that like a qualifier?

11 Q. No. What shows.

12 A. What shows. Yes.

13 Q. Exhibit 25 -- I'm sorry, Exhibit 26. I'm sorry, Exhibit
14 29 -- sorry.

15 THE CLERK: 529?

16 MR. PETERSON: I'm sorry. Exhibit 29.

17 BY MR. PETERSON: (continuing)

18 Q. And on page 4 of this, this shows a collection account,
19 correct, page 4?

20 A. Yes. There's Caine & Weiner for \$93 again.

21 Q. Is it fair to say, Mr. Sponer, that at all relevant times
22 you had multiple derogatory accounts that you were dealing
23 with?

24 A. I'm not sure how many there were at different periods.

25 Q. More than -- more than one?

Sponer - X

1 A. If that one is Wells Fargo.

2 Q. So more than one?

3 A. Oh, sorry. Yeah, I'm not sure.

4 Q. We've looked at a lot of documents that show you were
5 dealing with multiple accounts, correct?

6 A. Yes.

7 Q. And you actually -- well, you talked yesterday, the Wells
8 Fargo account was deleted towards the end of January in 2018,
9 correct?

10 A. Yes.

11 Q. And you continued to have to dispute other accounts after
12 that, didn't you?

13 A. I'm not sure. I think that was near the end of disputing
14 accounts.

15 Q. I'll have you look at Exhibit 555. And this is a letter
16 dated January 31st, 2018, correct?

17 A. Yes.

18 Q. And this is a dispute letter to TransUnion related to
19 Global Payments Check Service. Do you see that?

20 A. Yes.

21 Q. And did you author this letter?

22 A. It looks like something I would do.

23 MR. PETERSON: I'll offer Exhibit 555.

24 MR. SOLA: No objection.

25 THE COURT: Received.

Sponer - X

1 MR. PETERSON: Please publish.

2 BY MR. PETERSON: (continuing)

3 Q. So this is dated January 31st, 2018, correct?

4 A. Yes.

5 Q. And then if I could have you look at Exhibit 31, on
6 Exhibit 31, in the second paragraph it references that Wells
7 Fargo submitted a request on January 25th. Do you see that, a
8 request to Equifax, Experian, and TransUnion?

9 A. Yes.

10 Q. And so it's accurate, isn't it, that even after Wells
11 Fargo deleted your account, you were still sending disputes to
12 other creditors?

13 A. I really don't remember many accounts in the beginning of
14 2018.

15 Q. You testified that during the time frame we're talking
16 about here, you had a lot of other fairly major things going
17 on in your life; is that correct?

18 A. Yes.

19 Q. Your wife and her kidney donation, correct?

20 A. Yes.

21 Q. Your brother-in-law's illness, correct?

22 A. I didn't understand.

23 Q. I believe you testified the reason your wife was going to
24 donate a kidney is because her brother was dying. Is that
25 correct?

Sponer - X

1 A. Yes.

2 Q. And your wife did ultimately donate a kidney, but not to
3 her brother? Am I to understand that correctly?

4 A. Yes.

5 Q. And there was a lot of effort involved in caring for
6 Farah, who we talked about yesterday, correct?

7 A. Yes.

8 Q. So it's fair to say that during this time frame you had a
9 lot of major things going on, correct?

10 A. Yes, and we didn't need extra things.

11 Q. Did those other life events cause you stress and concern?

12 A. Yes, but it was out of love and who we are and choosing to
13 be married and give a kidney.

14 Q. You testified yesterday about concern that your access to
15 money through Wells Fargo would be cut off; is that correct?

16 A. Yes.

17 Q. And did that happen?

18 A. No.

19 Q. Did you ever call your credit card company to explain what
20 was -- or the credit card part of Wells Fargo, to explain what
21 was going on?

22 A. I'm not sure.

23 Q. You testified yesterday about trouble sleeping; is that
24 correct?

25 A. Yes.

Sponer - ReD

1 Q. Is that something you've dealt with at other times in your
2 life, trouble sleeping?

3 A. Yes.

4 Q. Mr. Sponer, I don't have any other questions right now.
5 Thank you.

6 THE COURT: Redirect.

7 MR. SOLA: Thank you, Your Honor.

8

9 REDIRECT EXAMINATION

10 BY MR. SOLA:

11 Q. Mr. Sponer, did you not seek credit because of the Wells
12 Fargo account being on your credit report?

13 A. Yes.

14 Q. Could you tell us about that or those decisions not to --

15 MR. PETERSON: Your Honor, I have a brief matter for
16 the Court.

17 THE COURT: Step over here, please.

18 (The Court and counsel confer off the record.)

19 BY MR. SOLA: (continuing)

20 Q. All right. I think you were going to explain to us
21 occasions when you decided not to seek credit because of the
22 Wells Fargo account being on your credit report.

23 A. Oh, yes. I was going to -- we planned to return to
24 traveling, and I planned to get a mileage Visa card or some
25 kind of mileage card.

Sponer - ReD

1 MR. PETERSON: Objection, relevance.

2 THE COURT: Overruled.

3 BY MR. SOLA: (continuing)

4 Q. All right. And why did you not seek that?

5 A. Because we had a \$29,000 fraudulent account on our credit
6 report.

7 Q. All right. And then was there another item you wanted to
8 finance that you did not seek?

9 A. Yes. We wanted to build an auxiliary dwelling unit on our
10 house.

11 Q. Within your house?

12 A. Yes.

13 Q. And what were your plans for that?

14 A. We wanted to be able to rent out the basement to earn
15 extra money.

16 Q. All right. And could you pay for that in cash if you were
17 going to do it?

18 A. No.

19 Q. And so that's why you needed financing?

20 A. Yes.

21 Q. And why didn't you seek the financing?

22 A. I -- I believed it was completely impossible to get a home
23 mortgage if you have a \$29,000 debt that you didn't pay.

24 Q. Now, we've looked at other creditors that you had to deal
25 with because of being a victim of identity theft. Were there

Sponer - ReD

1 any creditors you had to dispute the accounts as many times as
2 Wells Fargo?

3 A. No.

4 Q. Were there any creditors that were as difficult to get the
5 account off as Wells Fargo?

6 A. No.

7 Q. Were there any that you disputed 10 times but could not
8 get fixed?

9 A. No.

10 Q. Were there any that you had accounts with, companies that
11 were your creditors?

12 A. I want to be accurate, and I can't think of a
13 single -- yeah, no.

14 Q. You can't think of any; is that fair?

15 A. Yes.

16 Q. Now, can we look at Exhibit --

17 MR. SOLA: We have a rebuttal exhibit, Your Honor.

18 (There is a brief pause in the proceedings.)

19 BY MR. SOLA: (continuing)

20 Q. Let me ask, while we're waiting for this one -- oh, there
21 it is.

22 All right. So I believe you looked at this in
23 cross-examination, this letter to the AT&T fraud department.

24 A. Yes.

25 Q. It's a letter that you wrote -- well, tell us what this

Sponer - ReD

1 is.

2 A. This is the dispute letter that I kind of evolved and
3 learned to send to creditors.

4 Q. I'm sorry. I was speaking. That was impolite of me.

5 A. This was a dispute letter to AT&T.

6 Q. And what was the date?

7 A. August 18th, 2017.

8 Q. Okay. Then let's go to the last page. And what is this
9 letter?

10 A. This is a letter from AT&T to me, dated October 15th.

11 Q. And what did they say in response to your dispute?

12 A. "Dear Matthew Sponer, You recently contacted us regarding
13 a bill in your name dated October 4th, 2016, for a
14 former" -- do you want me to read the whole thing? -- "for a
15 former account," with a number, "owed to AT&T in the amount of
16 \$3,000. Based on our investigation, we have concluded that
17 you are not responsible for this bill. We have sent
18 authorization to our outside collection agency to remove all
19 negative references in your credit record regarding this debt.
20 Please allow 60 to 90 days for your credit record to reflect
21 this removal. Please accept our apologies for any
22 inconvenience this may have caused you."

23 Q. Now, among those other creditors you were dealing with,
24 were there ones that also responded quickly and told you they
25 had concluded it was identity theft?

Sponer - ReD

1 A. Yes.

2 Q. I know you mentioned Macy's yesterday. Do you remember
3 any others just off the top of your head? I know you had a
4 lot of letters and it was a long time ago.

5 A. I think some of the other wireless carriers were really
6 good.

7 Q. What about Kohl's?

8 A. Yes.

9 Q. Now, you've seen records from other creditors. In this
10 case are you seeking damages from Wells Fargo related to the
11 actions or your actions towards any other creditors besides
12 Wells Fargo?

13 A. No.

14 Q. And we looked at -- let's look at Exhibit 20.

15 All right. This is -- well, let us know what this
16 is, please.

17 A. This is my Equifax credit report from November 30th, 2017.

18 Q. All right. And do you see in the middle, there's a
19 collection agency?

20 A. Yes, the Caine & Weiner \$93 account.

21 Q. I believe you misspoke and said 92 earlier. Do you recall
22 that?

23 A. Yes, I did.

24 Q. All right. And that account, does it indicate the date
25 reported?

Sponer - ReD

1 A. April 2017. I think that's how to read it.

2 Q. All right. So that wasn't one of the original, so to
3 speak, fraud accounts?

4 A. No.

5 Q. All right. And then other than this Caine & Weiner
6 collection for \$93, would you look through this report and see
7 if there are other fraud accounts?

8 All right. Are those all your accounts?

9 A. Yes.

10 MR. SOLA: Next page. Stop. Let's see that one.

11 BY MR. SOLA: (continuing)

12 Q. And which is this account?

13 A. That's the fraudulent Wells Fargo account.

14 Q. All right. And then the next page?

15 All right. I think we're at the end of the report
16 there.

17 You looked at Exhibit 21. I believe it was an e-mail
18 from Wells Fargo in December 2017, indicating they wanted to
19 communicate by telephone; is that right?

20 A. Yes.

21 Q. And you indicated you did not call them; is that right?

22 A. Yes.

23 Q. Could you tell us why?

24 A. It's never been productive for me to, like, solve
25 complicated problems with a large company over the phone.

Sponer - ReX

1 They usually -- yeah, and then sometimes like the person just
2 can't do anything.

3 Q. And what about the fact that this they were claiming you
4 owed them this debt? Was that a factor in your not calling?

5 MR. PETERSON: Objection.

6 THE COURT: Sustained.

7 BY MR. SOLA: (continuing)

8 Q. Were you already communicating with them by mail at the
9 same time and getting responses?

10 A. Yes.

11 MR. SOLA: No more questions.

12 THE COURT: You have limited redirect?

13 MR. PETERSON: Very briefly, Your Honor.

14 THE COURT: Sorry. Limited recross.

15 MR. PETERSON: Thank you.

16

17 RECROSS-EXAMINATION

18 BY MR. PETERSON:

19 Q. Mr. Sponer, you testified, I believe yesterday, that your
20 credit is back to normal now, today?

21 A. I believe so.

22 Q. And I think you testified in your deposition that it's
23 back to perfect, correct?

24 A. I believe so.

25 Q. Have you applied for the mileage card you were referencing

Sponer - ReD

1 a few minutes ago?

2 A. No.

3 Q. Have you applied for a loan to do an ADU?

4 A. No.

5 MR. PETERSON: No further questions.

6 THE COURT: Anything else from plaintiff?

7 MR. SOLA: Yes.

8

9

REDIRECT EXAMINATION

10 BY MR. SOLA:

11 Q. Could you explain why you haven't applied for the mileage
12 card?

13 A. We're no longer traveling, and we don't want the ADU
14 because we're no longer traveling. It's a thing for when we
15 start moving again.

16 MR. SOLA: No more questions.

17 THE COURT: You may step down.

18 Call your next witness.

19 (The Court and court reporter confer off the record.)

20 THE COURT: Members of the jury, we'll take our mid
21 morning recess at this time. We'll be in recess for 15
22 minutes. Because of the way our time is going, I want it to
23 be 15 minutes. So be aware of the clock. It's going to be 15
24 minutes. I want to be sitting here on the bench in 15, okay?

25 Thank you. We're in recess.

Rodighiero - D

1 (A recess is then taken.)

2 (The Court, counsel, the parties, and the jury
3 reconvene.)

4 THE COURT: Be seated.

5 Call your next witness.

6 MR. SAND: Plaintiffs call Ana Rodighiero.

7 THE CLERK: Raise your hand.

8

9 ANA RODIGHIERO

10 called as a witness in behalf of the Plaintiff, having been
11 first duly sworn, is examined and testifies as follows:

12

13 THE CLERK: Please state your name and spell it.

14 THE WITNESS: My name is Ana Rodighiero. It's A-n-a
15 R-o-d-i-g-h-i-e-r-o.

16

17 DIRECT EXAMINATION

18 BY MR. SAND:

19 Q. Hi, Ms. Rodighiero.

20 How do you know Mr. Sponer?

21 A. He's my husband of 17 years.

22 Q. When did you guys meet?

23 A. In college. We were in a chemistry lab together. That
24 was the beginning.

25 Q. Where did you guys go to college?

Rodighiero - D

1 A. I went to Claremont-McKenna, and Matt went to Pitzer.
2 It's in Los Angeles.

3 Q. Were you guys science majors?

4 A. Yeah.

5 Q. Can you give us some background about Matt's work history?

6 A. He's worked as a computer programmer since he was in high
7 school. He started working for his mom. And after college he
8 worked for a little health insurance company or, like,
9 software for health insurance. And after we were married, he
10 couldn't find a job because it was right after the dot-com
11 crash thing, so we started a company together, writing games
12 for cell phones.

13 And then out of that came an opportunity for him at
14 another startup company in Irvine, and he took that job. We
15 moved to Irvine. Then we moved to San Francisco. And when
16 this startup was sold, he had some shares in it, and suddenly
17 we had enough money to -- to take off for a couple years and
18 be with our kids.

19 Q. And you talk about your kids. You have two children?

20 A. Yeah.

21 Q. What are their names?

22 A. Farah and Zelda.

23 Q. You talked about this trip you decided to go on.

24 Did you and Matt feel that you had a limited period
25 of time to take this trip?

Rodighiero - D

1 A. Yeah. We only had enough money to take off for a few
2 years, and we wanted to do it then instead of saving it for
3 later because the kids were young, and we felt this was a
4 great opportunity to spend time with them, while we were all a
5 family.

6 We were worried about my older daughter potentially
7 developing some serious health problems, and we wanted to go
8 while we were all healthy enough and didn't have to be near a
9 hospital or have any other issues.

10 Q. When did you leave on the sailing trip?

11 A. We left, I think, in 2013 for the first time. And we
12 spent a year getting to know ourselves as sailors in the
13 Caribbean, learning how to take longer trips and see how we
14 did before -- our big plan was to cross the Pacific.

15 Q. You said you started in 2013.

16 A. Uh-huh.

17 Q. Did you take a break in between at some point?

18 A. Yes. In 2014 -- yeah, I think it was the summer of 2014
19 we came back home, and the kids went to their doctors'
20 appointments for their checkups and things like that.

21 Our older daughter, it was found that her scoliosis
22 had progressed to the point that she needed spinal fusion
23 surgery. So we knew we were not going to be able to go back
24 to sailing. They said the recovery would be six to eight
25 months before you could be sure you were out of the woods with

Rodighiero - D

1 it.

2 So we found -- we found a place up here in Portland.
3 We knew that the hospital here was really good. We could stay
4 with Kaiser, our health insurance of several years. So we
5 moved up here to have a nice place to stay while Farah was
6 recovering from that surgery.

7 Q. So when did you resume the trip, the sailing trip, after
8 Farah recovered?

9 A. In the fall of 2015.

10 A. Did you notify Wells Fargo before you left for your trip
11 in 2015?

12 A. Yes.

13 MR. FRANSEN: Objection, lacks foundation.

14 THE COURT: Overruled.

15 BY MR. SAND: (continuing)

16 Q. You can answer.

17 A. Yes, we told them. Because in the past when we traveled,
18 sometimes the credit card, they would think -- because we were
19 making purchases in another city, suddenly they would cut it
20 off and call us and say that there was fraud on our account.
21 So we told them ahead of time so that that wouldn't happen,
22 that we were going to be gone for a whole year.

23 Q. So how did you intend to pay for things while on this
24 trip?

25 A. The reason we did that was because all of our expenses

Rodighiero - D

1 were going to be paid on the credit card. It's easier than
2 getting cash in each different country you go to. You
3 certainly don't want to carry a bunch of cash on the boat. So
4 everything was going to be done through credit card.

5 Q. And who was your credit card with?

6 A. Wells Fargo.

7 Q. When did you learn that your husband was the victim of
8 identity theft?

9 A. I think it was in October of 2016. He got a voicemail or
10 an e-mail from his brother, saying that someone had contacted
11 him to tell him that he was the victim of identity theft.

12 Q. What did -- where were you guys when you learned that he
13 was the victim of identity theft?

14 A. We were in Fiji. We were on a small island in Fiji.

15 Q. Did you change your plans as a result of learning about
16 the identity theft?

17 A. Yes. We decided that we needed to get to a larger city in
18 Fiji to get the boat ready so that we could move it to New
19 Zealand as quickly as possible, so that we would have good
20 Internet and the boat would be safe for the hurricane season.
21 We wouldn't have to worry, if we suddenly lost our credit card
22 or didn't have access to funds, that we wouldn't be able to
23 get out of Fiji into New Zealand in time.

24 Q. Do you recall roughly how long it took to get to New
25 Zealand?

Rodighiero - D

1 A. The passage itself was only six days, but waiting for the
2 weather window and getting the engine fixed, I think it took
3 about a month. We got to New Zealand in the middle of
4 November.

5 Q. What did Matt do while you were in New Zealand?

6 A. Once he was in New Zealand, he was able to get on the
7 Internet and follow the instructions that his lawyer had given
8 him and start to tackle the identity theft.

9 Q. How much time per day was Matt spending at this office
10 working on the identity theft?

11 A. I would say it was three to five hours every morning, like
12 five days a week, a normal work week kind of thing.

13 Q. And did taking that time away to go to the office to work
14 on this, how did that affect Matt?

15 A. He was frustrated that he had to spend so much time on it
16 when we could have been traveling and enjoying ourselves in
17 New Zealand. He apologized to us for not --

18 MR. FRANSEN: Objection, hearsay.

19 THE COURT: Sustained.

20 THE WITNESS: He --

21 THE COURT: No. When I say "sustained," that means
22 he'll ask you --

23 THE WITNESS: Oh, a different question. I was going
24 to say it a different way.

25

Rodighiero - D

1 BY MR. SAND: (continuing)

2 Q. When Matt was not at the office and the family was in New
3 Zealand, were you able to do some fun things in New Zealand?

4 A. Yeah. We took two short road trips in the north island.
5 We had bought a little camper van kind of thing -- not really
6 a camper van, just a van we could get around and explore New
7 Zealand.

8 But I was doing all the planning for these trips.
9 Matt was really not into it. He was nervous about using the
10 credit card, about being away from our home base.

11 MR. FRANSEN: Objection, lacks foundation,
12 hearsay.

13 THE COURT: Overruled.

14 Go ahead.

15 THE WITNESS: He was worried about the -- our car
16 breaking down and not being able to pay for it, so he wanted
17 to stick close to the boat as much as possible.

18 BY MR. SAND: (continuing)

19 Q. Now, you mentioned you did a lot of the planning. Because
20 Matt was at the office, did you have to subsume or carry other
21 duties that Matt would typically do while he was at the
22 office?

23 MR. FRANSEN: Objection, relevance.

24 THE COURT: Sustained.
25

Rodighiero - D

1 BY MR. SAND: (continuing)

2 Q. In this 2016 time period, do you know if Wells Fargo took
3 the account off of Matt's credit report?

4 A. No, they didn't.

5 Q. Prior to the identity theft, did Matt have good credit?

6 A. Yes. He had excellent credit.

7 Q. Do you know if it was important for him to have good
8 credit?

9 A. I know that he was proud of having good credit, even as a
10 college student. He had built it early. I don't know. So he
11 had talked about it before.

12 Q. How long was the family in New Zealand?

13 A. We were there until the middle of February.

14 Q. Why did you decide to return to the U.S.?

15 A. There were two reasons. I was going to go back home to
16 donate a kidney to my brother. I thought that I could just do
17 that in a quick trip, more or less. I could stay with my
18 family, and Matt could stay with the kids on the boat instead
19 of flying out and living in a hotel for a month.

20 So I had planned to return, and I was already
21 starting to do the testing for that in New Zealand. But once
22 Matt decided that this Wells Fargo thing was a bigger deal and
23 it wasn't fun to go traveling when we were afraid every moment
24 that something worse was going to happen, he decided that he
25 would come home so that he could deal with it, and then we

Rodighiero - D

1 would go back together and continue our trip.

2 Q. While you were in New Zealand, had Wells Fargo deleted the
3 fraudulent account --

4 A. No.

5 Q. I'm sorry. Let me finish the question. That was the
6 first part of the question.

7 While you were in New Zealand, had Wells Fargo
8 deleted the fraudulent account from Matt's credit report,
9 would the family have continued their vacation?

10 MR. FRANSEN: Objection, speculation.

11 THE COURT: Overruled.

12 You can answer that question.

13 THE WITNESS: Yes. That was the plan. He thought he
14 would do it really quickly, and we would just move on.

15 BY MR. SAND: (continuing)

16 Q. And where would you have gone?

17 A. We were going to spend some time in New Zealand, sailing
18 around the outside of it and maybe a road trip in the southern
19 island. Then afterwards, our super plan was to sail the boat
20 up to Japan, Alaska, and then back down and leave it in the
21 Pacific Northwest, so once we went back to work, we'd still be
22 able to take short trips on vacations.

23 Q. And, roughly, when did you return to the U.S.?

24 A. We returned in February of 2017.

25 Q. When you returned to the U.S., was there any news from

Rodighiero - D

1 Wells Fargo?

2 A. I don't read the letters. Matt said that it was -- the
3 account was still --

4 MR. FRANSEN: Objection.

5 THE WITNESS: -- on.

6 THE COURT: Sustained.

7 BY MR. SAND: (continuing)

8 Q. Can you help the jury understand your observations about
9 how Matt was doing at this point in time in 2017 after
10 returning to the U.S.?

11 A. When we first returned, what I mostly noticed from him was
12 just kind of withdrawal from the whole activity. We had told
13 people about the identity theft. And so when we returned, we
14 were getting a lot of advice about it; and Matt just would not
15 be in those conversations. He just couldn't handle it,
16 because this was all advice that he had already taken and had
17 gotten him nowhere.

18 He was feeling like he must have done something
19 wrong, must not have been doing it correctly. He just felt
20 vulnerable and like at any moment Wells Fargo could call in
21 this loan and make us pay this debt. They could cut off our
22 credit card. And he just didn't know what to do about it.

23 Q. When your family returned to the U.S., did the family
24 change any plan because of the Wells Fargo account being on
25 Matt's credit report?

Rodighiero - D

1 A. Yes. We had been talking about -- or Matt had been
2 talking about starting a company. He wanted to --

3 MR. FRANSEN: Objection, hearsay.

4 THE COURT: Overruled.

5 You can answer the question.

6 THE WITNESS: He wanted to write a program that would
7 make it easier for sailors and other people with limited
8 Internet to access the Internet and be able to download web
9 pages faster and things like that.

10 When we got back to the U.S., and he thought -- his
11 plan was to clear up the Wells Fargo thing and then start
12 working on that business. But he kind of just let it drop.

13 Also, we were thinking that since we had lost that
14 one year with Farah's surgery, that we were kind of going to
15 run out of money earlier, we're not going to be able to do our
16 whole plan. So we were thinking about spending a little time
17 making our basement into a separate unit so we could rent it
18 while we were gone -- or, actually, we were going to live in
19 it and rent the upper part to earn some income while we were
20 sailing, so that we could finish our trip on the money that we
21 had.

22 BY MR. SAND: (continuing)

23 Q. And just to be clear, you did not end up applying -- the
24 family did not end up applying for that loan for this
25 auxiliary unit?

Rodighiero - D

1 A. No. Matt said he had to fix the credit first.

2 MR. FRANSEN: Objection.

3 THE COURT: Wait a second.

4 That objection is sustained.

5 BY MR. SAND: (continuing)

6 Q. Do you recall if Matt applied for the loan?

7 A. No.

8 Q. Let's move into the summer and early fall of 2017.

9 Would this have been the first full school year after
10 returning from the trip that you were enrolling the kids in
11 school here in Portland?

12 A. Yes, uh-huh.

13 Q. Farah has some special needs. Does she go to a school for
14 children with special needs?

15 MR. FRANSEN: Objection, relevance.

16 THE COURT: Overruled.

17 THE WITNESS: She goes to regular high school,
18 Cleveland High School, but she has a special day class and has
19 an IEP, an individual plan describing her goals for the year.
20 And that's something we negotiate with the teachers for every
21 year.

22 BY MR. SAND: (continuing)

23 Q. Is the process of enrolling Farah more cumbersome than
24 enrolling Zelda, your other daughter?

25 A. Yes. We have to -- Farah can't talk. She doesn't

Rodighiero - D

1 communicate in any way. So we really need to meet the
2 teachers and show them how to keep her safe. She has balance
3 issues, coordination issues. So -- and then we also have to
4 spend a lot of time figuring out -- helping the teachers
5 understand how to develop expectations for her, what she can
6 and can't do.

7 If you just throw her into school, it will just look
8 like she can't do anything, because she'll let other people do
9 everything for her, you know. But you have to educate people
10 as to what she should be expected to do, so that she can grow
11 and learn new things.

12 Q. And during this enrollment process, was Matt involved?

13 A. Normally he is, but this time he wasn't. I felt like I
14 was going through it alone. I had to do the research --

15 MR. FRANSEN: Objection, relevance.

16 THE COURT: Sustained.

17 BY MR. SAND: (continuing)

18 Q. Let's move into November of 2017. Is Matt still disputing
19 the fraudulent Wells Fargo account?

20 A. Yes.

21 Q. At this point in time are you observing -- based on your
22 observations, was he taking a lot of time disputing the Wells
23 Fargo account?

24 A. Yes. My observation is that he was on his computer for a
25 few hours every day. I don't know everything that he was

Rodighiero - D

1 doing there, but what he would talk about are letters that he
2 was sending, new evidence that he had found for, like, our
3 whereabouts at the time of the theft, and I don't remember
4 what else. But, yeah, he was researching and figuring things
5 out.

6 Q. How did losing all of this time affect Matt, based on your
7 observations of him?

8 A. When he was able to find new evidence or new things to
9 write in the letters, he was excited about it. But
10 when -- between times, he was just withdrawn and -- I mean,
11 there were a lot of days he just spent in his room not doing
12 anything that I could tell.

13 He was not sleeping well at night. He was sleeping
14 during the day. Sometimes he would just close the door to the
15 room. And when I'd go in later, he's just sitting in there
16 quietly, in a corner. He was just, like, really not getting
17 on with his life and his ambitions and feeling -- he seemed to
18 be feeling like he couldn't do anything.

19 Q. And how long did you say you and Matt have been married?

20 A. Seventeen years.

21 Q. Was it unusual to see him like that?

22 A. Yes. He's always been driven. He's always been the
23 energy of our family. And he's the one with the big hobbies
24 and the big dreams.

25 Q. Do you recall Wells Fargo's responses to Matt's disputes?

Rodighiero - D

1 A. I know that they said that the debt was ours. I know that
2 they said that we owed them \$30,000.

3 Q. Do you recall any particular letters from Wells Fargo in
4 particular?

5 A. I know one that was -- in that time of the November,
6 December, that said that they would send his report to the
7 fraud department. And I remember him just being, like,
8 totally angry about that, totally upset, because he had
9 already sent it to the fraud department. I mean, he'd been
10 doing that for a year. And this was their concession to him
11 was, like, "Oh, here, send this to the fraud department and
12 we'll take a look at it."

13 Q. Did you observe any other symptoms you can remember about
14 Matt's stress during this time period?

15 A. Over this time period he was -- he was having headaches.
16 He was just -- sleeplessness and sleeping during the day,
17 having headaches at night, and just generally not wanting to
18 go out or do anything or talk with anybody.

19 Q. Thank you, Ms. Rodighiero.

20 MR. SAND: We'd pass the witness.

21 THE COURT: Cross-exam.

22 MR. FRANSEN: Thank you.

23

24

25

Rodighiero - X

CROSS-EXAMINATION

BY MR. FRANSEN:

Q. Ms. Rodighiero, you testified a moment ago that the family made a decision in 2016 to come back to the United States?

A. Yeah. We decided, I think, in January, but yeah.

Q. And I'm sorry. I didn't catch your answer. You said January 2016?

A. No, January 2017 I think is when we --

Q. I apologize. My mistake.

At that point in January 2016 -- I'm sorry, at that point in January 2017, when you made the decision, do you know if Mr. Sponer had seen any correspondence from Wells Fargo?

A. I don't know if he had had a letter from them or if it was just the credit report still showing the debt on it.

Q. Okay. And what about other negative accounts on his credit report? Were you aware of those accounts?

A. Yes.

Q. And is it your understanding he was also aware of those accounts at the same time?

A. Yeah.

Q. So it wasn't just the Wells Fargo account? It was --

A. No. In January he was sending letters to a lot of people.

Q. Yeah. But the reason to come home had to do with the larger problem of identity theft?

A. The reason to come home had to do with our worry about the

Rodighiero - X

1 credit card.

2 Q. Okay. Did you see any of the credit reports that your
3 husband obtained?

4 A. Not that the details -- or that I remember them.

5 Q. Do you remember the dates of any credit reports?

6 A. Not specifically, no.

7 Q. Do you have an idea of the first time you might have seen
8 a credit report related to the -- following the identity
9 theft?

10 A. I'm sure he showed me the one in January. I just don't
11 remember any of the details of it.

12 Q. All right. You were asked a moment ago or you testified a
13 moment ago that if Wells Fargo would have deleted the auto
14 account -- I believe you testified you wouldn't have come back
15 home?

16 A. The whole -- well, the whole family wouldn't have come
17 back home. And, at the very least, we all would have gone
18 back sailing again as soon as possible.

19 Q. So is that the case, if the Wells Fargo account was
20 deleted, but all the other multiple derogatory accounts were
21 still on his credit, you're saying you wouldn't have come back
22 home?

23 A. The one we worried about was Wells Fargo because it was
24 the biggest one. We thought that that was the one that would
25 cause Wells Fargo to stop our credit card.

Rodighiero - X

1 Q. And Wells Fargo never stopped your credit card?

2 A. No.

3 Q. And they never threatened to stop your credit card, that
4 you're aware of?

5 A. No, not that I'm aware of.

6 Q. Did you ever have any communications with Wells Fargo
7 following July 2016?

8 A. Me?

9 Q. Right, you.

10 A. I don't think so.

11 Q. I believe you said you did see some letters that Wells
12 Fargo sent. And the one I believe you related to explained
13 that Wells Fargo was referring something to the fraud
14 department.

15 A. In the -- at the end of 2017.

16 Q. And that was my question. Do you recall when you saw
17 that?

18 A. I thought he said 2016. Well, I recall Matt talking about
19 that letter. I don't know if I saw any of the letters.

20 Q. You don't know if you saw any of the letters?

21 A. Right.

22 Q. What about the letters that your husband sent to Wells
23 Fargo? Did you see any of those?

24 A. No. He did later send me his template for reporting
25 fraudulent accounts, which I don't think that was the same as

Rodighiero - X

1 his Wells Fargo letters, so no, I don't think so.

2 Q. All right. Are you aware of how many other accounts the
3 identity thief opened in your husband's name?

4 A. Several. I don't know how many.

5 Q. Okay. Did you know it was more than 10?

6 A. No, I didn't know that.

7 Q. Now, I asked you about the communications with Wells
8 Fargo, which you said, if I'm correct, you did not -- you
9 don't recall reading any of Wells Fargo's letters, and you
10 don't recall seeing any of your husband's letters to Wells
11 Fargo. Did I get that right?

12 A. That's right.

13 Q. How about for the other accounts that were out there?
14 Would your answer be the same? You didn't see the letters
15 that came in? You didn't see the letters that went out?

16 A. I didn't see the letters that came in, if there were any.
17 But I did sort of see generally what went out, because I was
18 the victim of identity theft at around the same time and I had
19 fraudulent accounts on my credit, and Matt told me, "Oh, I
20 have a template for this. This template will work for most of
21 them. Just use this." So I adapted his template for my
22 fraudulent accounts.

23 Q. Is it fair to say that your testimony about the
24 communications with Wells Fargo, that's not based on what you
25 personally observed, but it's what you were told?

Rodighiero - X

1 A. Yeah. I don't think I saw the letters at the time. It's
2 hard for me to know now, because now I have seen them.

3 Q. And I wanted to confirm just a couple things. You
4 explained at one point that you witnessed your husband on the
5 computer for a few hours every day. That was in -- is this
6 the November, December period we're talking about?

7 A. Yeah. It was around -- I think it was like October,
8 November. What I remember is like -- I think our IEP meeting
9 was in the end of October, and it was just right around that
10 same time that he was working on that.

11 Q. What did you say? What meeting?

12 A. The IEP meeting for our daughter Farah.

13 Q. Okay. I'm sorry. I didn't understand that.

14 Do you know if anybody from Wells Fargo tried to call
15 your husband to talk to him?

16 A. I don't know.

17 Q. All right. No further questions. Thank you.

18 MR. SAND: And we have no redirect, Your Honor.

19 THE COURT: You may step down.

20 Do you want this witness to be excused?

21 MR. SAND: Yes.

22 THE COURT: Any objection?

23 MR. FRANSEN: No objection.

24 THE COURT: You are excused.

25 Call your next witness.

Barron - D

1 MR. SAND: Plaintiff calls Ms. Mary Frances Barron.

2 THE COURT: Would counsel please approach.

3 (The Court and counsel confer off the record.)

4 THE COURT: Swear the witness.

5

6 MARY FRANCES BARRON

7 called as a witness in behalf of the Plaintiff, having been
8 first duly sworn, is examined and testifies as follows:

9

10 THE CLERK: Please have a seat. State your name and
11 spell it.

12 THE WITNESS: My name is Mary Frances Barron,
13 B-a-r-r-o-n.

14

15 DIRECT EXAMINATION

16 BY MR. SAND:

17 Q. Good morning, Ms. Barron.

18 How do you know Matthew Sponer?

19 A. Matthew is my son.

20 Q. Do you have any grandchildren?

21 A. Two.

22 Q. What are their names?

23 A. Farah and Zelda.

24 Q. What kinds of things does Matt do for Farah?

25 A. Matt is Farah's primary caregiver. He does -- he gets her

Barron - D

1 up in the morning. He dresses her. He takes her to the
2 bathroom. He showers her. He sits her down at the table,
3 puts a bib on her, and sets up food for her. She tries to
4 feed herself as best she can, and then he feeds her.

5 He gets her ready for school, puts her on the bus,
6 waits for the bus, straps her in, if she's going to school.
7 Otherwise, he does all her toileting. He does -- he helps her
8 walk. He gets her up out of a chair and then guides her as
9 she walks.

10 Q. Is it fair to say they have a close relationship?

11 A. Yes. Matt and Farah are very close. He's been her
12 primary caregiver her whole life.

13 Q. When did you learn that your son was the victim of
14 identity theft?

15 A. In October of 2016.

16 Q. And in that time frame, October 2016, what did you do
17 after you learned?

18 MR. FRANSEN: Objection, relevance.

19 THE COURT: Overruled.

20 THE WITNESS: Matt called me on the -- on the phone
21 and said that he was having a problem in terms of being a
22 victim of identity theft.

23 MR. FRANSEN: Objection.

24 THE COURT: When there is an objection, please stop
25 talking.

Barron - D

1 THE WITNESS: Sorry.

2 THE COURT: That's okay.

3 You may continue.

4 THE WITNESS: He asked me to come to the South
5 Pacific and help him take his boat to a place where he could
6 communicate better.

7 BY MR. SAND: (continuing)

8 Q. And, Ms. Barron, where do you live?

9 A. Las Vegas, Nevada.

10 Q. So you flew from Las Vegas to --

11 A. -- to Nueve in the South Pacific.

12 Q. And what did you do when you arrived in the South Pacific?

13 A. What did I do?

14 Q. Well, I think we're learning about some geography. Is
15 that in Fiji?

16 A. Yes. My husband and I got tickets as quick as we could.
17 Matt said that he needed us to go with him and his wife and
18 his children on a trip across the ocean, without land, about a
19 nine-day trip. And so we left on October 31st and arrived in
20 the South Pacific on November 2nd.

21 Q. And where was this trip across the ocean? Where were you
22 going?

23 A. We were going to Fiji.

24 Q. I'm sorry. You landed in Fiji?

25 A. We landed in Fiji.

Barron - D

1 Q. Where were you going with Matt?

2 A. Oh, he wanted to get to Whangerei, New Zealand, because he
3 wasn't able to communicate well enough on the Internet or by
4 telephone or just communicate from Fiji. It was very remote.

5 Q. When you arrived -- when you arrived in New Zealand, what
6 was Matt's routine?

7 A. Matt's routine was that he immediately rented an office in
8 New Zealand. We were able to find a place on the city dock.
9 And so he rented an office where he could go and isolate
10 himself every day, he and Ana, and work on the identity theft
11 issue.

12 Q. So while he was working on the identity theft issue, what
13 were you doing?

14 A. I was -- my job was to take care of the grandbabies. We
15 have Farah, who was 13 at the time, and Zelda, who was 10.

16 Q. How were the grandbabies handling having their father away
17 working on these issues at the office?

18 MR. FRANSEN: Objection, relevance.

19 THE COURT: Sustained.

20 BY MR. SAND: (continuing)

21 Q. How much time was Matt spending away from his family in
22 New Zealand?

23 A. He was spending most of the day is my recollection. And
24 he was always going -- getting up. He wasn't sleeping well.
25 I saw that he was up most of the night. He was very

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1 concerned.

2 He would get up in the morning. And I needed help
3 getting Farah off the boat, because it was at a city dock.
4 But she's very, very cumbersome. She's hard to stand. I had
5 to get her up kind of a ladder and then have her go off the
6 side of the boat to take her up the dock to the showers, to
7 the bathroom, to toilet her, et cetera. So I had a hard time,
8 so he -- he would help me get her out. And then I would -- my
9 husband and I would have to get her back on the boat.

10 Q. How long did you and your husband stay in New Zealand
11 helping Matt and his family?

12 A. We stayed until December 26th.

13 Q. So about two months?

14 A. About two months, yes.

15 Q. Do you know why Matt and his family ended this vacation?

16 A. Yes. This was a trip of a lifetime for them. They had
17 been planning on doing this for a year. They had finally
18 gotten Farah to the point that she was pretty well potty
19 trained. But we had to time her bathroom visits. And they
20 had moved to Portland to go to the Doernbecher Children's
21 Hospital so she could have major surgery. They finished that.
22 They got her up and going. And then they hoped to sail for
23 the first time as a family.

24 And, sadly, they had to cut their trip short because
25 Matt was very, very concerned that his -- his banking

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1 relationship was going to go away and his accounts would die.
2 So they cut their trip short.

3 Q. Were there any other reasons that they cut the trip short?

4 A. When they -- Ana, my daughter-in-law, who is an amazing
5 person, had decided that she was going to donate a kidney to
6 her brother. They had planned that Ana was going to leave
7 Matt and the girls on the boat and continue traveling. And
8 she was going to come back, donate the kidney, and then rejoin
9 the family. She was a match at that time for her brother, and
10 that's what they planned to do.

11 But instead they took the boat out of the water, put
12 it on the horn, had to batten everything down, rent a space,
13 and come back to America to hopefully resolve this issue that
14 they had with Wells Fargo.

15 Q. Do you recall when they returned to the U.S.?

16 A. I do not recall exactly. I think it was around February.

17 Q. And did you keep in touch with Matt when he and his family
18 returned to the U.S.?

19 A. I always kept in touch with Matt. If he had -- when he
20 was sailing, if he had Internet connection, we could Skype.
21 Otherwise I would e-mail him and he would e-mail me. And then
22 when he had an Internet connection, he could pick it up.

23 Q. Let's move forward to the fall of 2017. Did you see Matt
24 in that time frame?

25 A. I did. My husband and I went to Portland to visit with

Barron - D

1 Matt and Ana and the girls in late October, and we stayed
2 until early November. It was about a five- or six-day trip.

3 And we -- when I got there, I was surprised to see
4 how Farah had regressed, that she was falling.

5 MR. FRANSEN: Objection.

6 THE COURT: Sustained.

7 BY MR. SAND: (continuing)

8 Q. How was Matt doing when you saw him in October?

9 A. Matt had not been sleeping. He had big circles under his
10 eyes. He was spending all his time at his computer, trying to
11 resolve this problem.

12 Q. When was the next time you saw Matt?

13 A. I saw him in December of 2017, just --

14 Q. Do you know if in December, was Matt still trying to get
15 the Wells Fargo account off his credit report?

16 A. Yes. Yes, he was. He came to see me, me and my husband,
17 in Las Vegas, and he brought Farah with him.

18 Q. And -- I'm sorry. I didn't mean to cut you off.

19 A. He was still working on it.

20 Q. Can you tell the jury, at this point, December of 2017,
21 what you observed about Matt, how he was doing?

22 A. He was sad. Matt was sad. He wasn't himself. He was not
23 able to spend the amount of time that he normally did with his
24 daughter, taking care of her. And he was -- continued with
25 the circles under his eyes, and he was more what I would call

Barron - D

1 ataxic. He was, you know, nervous.

2 He said that he felt that his reputation had been
3 damaged, and he wasn't getting -- he wasn't moving forward
4 with his life.

5 Q. You used the word "ataxic." That's a medical term.

6 A. I'm a nurse.

7 He was kind of jumpy. He was jumpy and anxious
8 because -- and I said -- I had talked to him about it, and he
9 said he wasn't able to spend the time with Farah.

10 MR. FRANSEN: Objection.

11 THE COURT: Sustained.

12 THE WITNESS: Sorry.

13 BY MR. SAND: (continuing)

14 Q. Are there any other symptoms that you recall Matt having
15 of stress in this time period around December of 2017?

16 A. He wasn't sleeping. He was not eating consistently. And
17 he had big circles under his eyes and he was more sad than he
18 had been.

19 Q. Was it unusual for you to see your son like this?

20 A. Yes, yes. I was very concerned. Yeah. He's -- yes.

21 MR. SAND: Thank you. No further questions.

22 THE COURT: Cross-exam.

23

24

25

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CROSS-EXAMINATION

BY MR. FRANSEN:

Q. Ms. Barron, you testified a little bit ago that after Farah's surgery, the family was able to go on its first sailing trip. Do you recall that testimony?

A. I -- no. They were able to go on the trip of a lifetime after she had her surgery, yes.

Q. Okay. Didn't they -- hadn't they just been on a sailing trip for about a year before that?

A. They had sailed before, but it was not this major, just dream trip. They had sailed before. But Farah needed to have major surgery, so they came back. And they wanted to get Farah totally well, and they wanted to get her seizures controlled. They wanted to get her on a good routine. And they wanted to start the program of Zelda having home school.

Q. Okay. My question was about whether they had been sailing before the surgery. And your answer is yes, you're aware they were?

A. Yes, they had sailed some, yes.

Q. Well, you say "some." I believe it was quite an extended trip. Isn't that correct?

A. What they did is they went from -- they went around the Caribbean.

Q. Okay.

A. This was -- this other trip was the trip -- as I've said,

Barron - X

1 it was the trip of a lifetime. It was to go --

2 Q. Okay. Thank you.

3 A. Okay.

4 Q. How many times per year do you normally see your son and
5 his family?

6 A. I normally see them four times a year, every three or four
7 months.

8 Q. And how many times -- you testified, I believe, that you
9 saw your son in November, December -- yeah, November,
10 December, 2016 in New Zealand.

11 A. Yes.

12 Q. Yes. Okay.

13 You saw your son and his family in New Zealand
14 November, December 2016, correct?

15 A. Yes.

16 Q. Okay. When was the next time you saw them or you saw your
17 son?

18 A. March 2017.

19 Q. Okay. And was the next time in November 2017?

20 A. October, November 2017.

21 Q. Okay.

22 MR. FRANSEN: No further questions.

23 THE COURT: Redirect?

24 MR. SAND: No redirect, Your Honor.

25 THE COURT: You may step down.

Grier Deposition

1 Do you want this witness to be excused?

2 MR. SAND: That's fine with us.

3 MR. FRANSEN: No objection.

4 THE COURT: You are excused. You're free to go.

5 Call your next witness.

6 MR. SOLA: Your Honor, we wish to play a videotaped
7 deposition of Ashley Grier. This would be Court Exhibit 601.

8 MR. FRANSEN: No objection.

9 (Court Exhibit No. 601, the videotaped deposition of
10 Ashley Grier, is then played for the jury.)

11 MR. SOLA: Is that -- and let us know if the volume
12 is too high.

13 (Court Exhibit No. 601, the videotaped deposition of
14 Ashley Grier, is then played for the jury.)

15 MR. SOLA: Your Honor, counsel has just asked me to
16 indicate the mechanism in which this was taken, just so that
17 it doesn't look -- anyway, if I might just make a comment?

18 THE COURT: I have no idea what you're talking about.

19 MR. PETERSON: Please.

20 MR. SOLA: All right. This was done by a video call,
21 and so she's looking down at the video screen.

22 He didn't want you to believe that I was there and
23 she wasn't looking at me. And so that's why she's looking
24 down.

25 THE COURT: Thank you.

Funsch and Ebron Depositions

1 Do you have additional information on this one, or
2 are you calling your next witness?

3 MR. SOLA: We're calling our next witness.

4 This will be Brian Funsch, Court Exhibit 602.

5 (Court Exhibit No. 602, the videotaped deposition of
6 Brian Funsch, is then played for the jury.)

7 MR. SOLA: Our next deposition tape is Montressa
8 Ebron, Court Exhibit 603.

9 THE COURT: How long is that?

10 MR. SOLA: I think about 10 minutes.

11 THE COURT: We'll go ahead and play it.

12 MR. SOLA: Oh, it's six minutes.

13 THE COURT: Perfect.

14 (Court Exhibit No. 603, the videotaped deposition of
15 Montressa Ebron, is then played for the jury.)

16 THE COURT: Members of the jury, we'll be taking our
17 midday recess at this time. Jennifer will escort you out in
18 just a moment.

19 I have a couple of commercials before we take our
20 break. We'll be in recess until 1:00. I have another matter
21 that I need to hear during my lunch hour. And as it works, I
22 actually have to give these people a break to eat lunch,
23 et cetera.

24 So we will be in recess until 1:00, or you will be in
25 recess until 1:00. We will be doing other things.

1 Two commercials. One, I told you at the beginning of
2 the trial that I would allow the jury the opportunity to ask
3 questions of any witnesses that they were intrigued about and
4 wanted to ask further questions of the witnesses that didn't
5 get asked by the party.

6 The parties and I decided in the interest of
7 time -- and I think time is going to be a little tighter than
8 I thought it would be -- that we were going to forgo that
9 practice. That explains why I have not turned to you and
10 said, "Do you have any questions?"

11 The second commercial is that on the exhibits you
12 received, at least some of them, you may have noticed that
13 personal identifying information on Mr. Sponer has been
14 redacted.

15 That was redacted because it's a court rule that
16 requires exhibits here received as part of the court
17 proceeding to be redacted, and it's for the protection of
18 everybody, because we are a public body and that means that
19 those records become publicly available.

20 So at my request, those exhibits have now redacted
21 the personal information of Mr. Sponer. And if anybody else's
22 personal information comes into this case, it will be
23 similarly redacted.

24 The commercial part of this is that the originals
25 were not redacted. They've only been redacted for purposes of

1 this trial. So when you look at them, please understand that
2 what you're looking at, although they are redacted, they
3 weren't like that during the course of the interactions
4 between the parties.

5 With that, have a pleasant lunch. I will see you in
6 an hour.

7 (The jury leaves the courtroom.)

8 THE COURT: We'll see you in an hour.

9 If you wouldn't mind kind of moving your things to
10 one side or the other on the tables, because there are some
11 lawyers coming in behind you. You don't need to take things
12 off the table. I promise they won't investigate or look into
13 your notebooks or anything like that, but they will need to
14 use a bit of your space.

15 MR. SAND: Can we get a tally on time, just so we can
16 know where we are?

17 THE COURT: So for plaintiff, it is 5:53.

18 MR. PETERSON: Remaining or taken?

19 THE COURT: Remaining. And 18 seconds.

20 For defense, it is 8:21 and 56 seconds.

21 MR. PETERSON: Thank you, Your Honor.

22 (A lunch recess is then taken.)

23 (The Court, counsel, the parties, and the jury
24 reconvene.)

25 THE COURT: Be seated. Good afternoon.

Hollomon and Brady Depositions

1 Call your next witness.

2 MR. SOLA: Your Honor, the fact that we can't look at
3 or talk to the jurors, I don't think you gave them that
4 instruction. I don't want them to think we're unfriendly.

5 THE COURT: Lawyers get nervous.

6 So when you're walking around in the hallway and they
7 don't say anything to you, they wanted me to assure you it's
8 not because they don't like you or don't think you're swell
9 people; it's because I directed them not to have communication
10 with you. So to the extent you're in an elevator and they're
11 not saying anything, that's why.

12 MR. SOLA: Our next deposition by videotape is Colin
13 Hollomon, Court Exhibit 604.

14 (Court Exhibit No. 604, the videotaped deposition of
15 Colin Hollomon, is then played to the jury.)

16 MR. SOLA: The next videotaped deposition is William
17 Brady, Court Exhibit 605.

18 (Court Exhibit No. 605, the videotaped deposition of
19 William Brady, is then played for the jury.)

20 MR. SOLA: We need to confer.

21 MR. PETERSON: Just briefly.

22 (Counsel confer off the record.)

23 (Court Exhibit No. 605, the videotaped deposition of
24 William Brady, is then played for the jury.)

25 MR. SOLA: Next we have the videotaped deposition of

Berg and Gobin Depositions

1 Bets Berg, Court Exhibit 606.

2 (Court Exhibit No. 606, the videotaped deposition of
3 Bets Berg, is then played for the jury.)

4 (Counsel confer off the record.)

5 MR. SOLA: At this time we wish to read a deposition
6 excerpt, and this young woman is going to read from the
7 Equifax portion.

8 THE COURT: Okay.

9 MR. SOLA: And do we need to do a court exhibit
10 number for this?

11 It's Celestina Gobin, for Equifax Information
12 Services, LLC.

13 (The deposition testimony of Celestina Gobin is read
14 as follows:)

15

16 DIRECT EXAMINATION

17 BY MR. SOLA:

18 Q. Would you state your name.

19 A. Yes. Celestina Gobin.

20 Q. And you have been designated to testify on behalf of
21 Equifax regarding the topics in the deposition notice; is that
22 correct?

23 A. That's correct.

24 Q. Okay. And primarily we're going to be talking about
25 Automated Consumer Dispute Verification forms that were sent

Gobin Deposition - D

1 by Equifax to Wells Fargo. Have you seen those forms?

2 A. Yes, I have.

3 Q. Okay. And is it okay, instead of saying the full title,
4 if we refer to those as ACDVs?

5 A. Yes.

6 Q. Okay. And then I think to complete the process, then a
7 notice is sent to the furnisher of the disputed information
8 regarding the dispute; is that right?

9 A. That's correct. The ACDV is then generated and is sent to
10 the data furnisher, along with the image and any documentation
11 that would have been provided from the consumer, yes.

12 Q. Okay. And that -- then the furnisher that gets the ACDV,
13 they're supposed to investigate the disputed information; is
14 that right?

15 A. That's correct.

16 Q. And then after they complete their -- and they're
17 investigating as to whether the disputed information is
18 accurate or not; is that fair to say?

19 A. That's correct.

20 Q. And based on their response, then Equifax will either
21 decide to keep the information as it is, to remove it, or to
22 modify it; is that right?

23 A. That's correct.

24 Q. And Equifax relies on the furnisher to tell it if the
25 disputed information is accurate or not; is that right?

Gobin Deposition - D

1 A. Yes, that's correct.

2 Q. Now, would you look -- there should be a series of ACDVs.
3 And the first one I want you to look at, if the court reporter
4 would mark that as Exhibit 1, it's got a Bates number of 110
5 through 113.

6 A. Yes. I have that in front of me.

7 Q. Okay. And do you recognize this as an ACDV?

8 A. Yes, I do.

9 Q. By sending this ACDV to Wells Fargo, Equifax expects Wells
10 Fargo to investigate whether this account is fraudulent or
11 not; is that right?

12 A. That's correct.

13 Q. And then Wells Fargo is supposed to report the results of
14 its investigation back to Equifax; is that right?

15 A. That's the expectation, yes.

16 Q. Then Wells Fargo, they responded to the ACDV; is that
17 right?

18 A. Yes, they did.

19 Q. And we actually see a response date listed of 11-16-2016.
20 Do you see that?

21 A. I do.

22 Q. Now, Wells Fargo entered a response code that's just below
23 the response date. Do you see that?

24 A. Yes, I do.

25 Q. And here Wells Fargo checked off the box "modify as

Gobin Deposition - D

1 shown"; is that right?

2 A. That's correct.

3 Q. The "modify as shown" response, that indicates that Wells
4 Fargo is providing some different account information about
5 the account; is that right?

6 A. That's correct.

7 Q. Okay. But they're not telling Equifax to delete the
8 account, are they?

9 A. That's correct. They're not telling us to delete it.

10 Q. Okay. So based on this response, Equifax understood that
11 Wells Fargo did not determine that the account was fraudulent,
12 right?

13 A. Correct.

14 Q. And based on this response, Equifax is going to keep
15 reporting the account on plaintiff's report, correct?

16 A. Yes. Based on this answer, they did not ask us to delete
17 it, so it would continue to report.

18 Q. That's right. If Wells Fargo had checked either of the
19 two boxes that say "delete," then Equifax would have deleted
20 the account, correct?

21 A. That's correct.

22 Q. And then the account would not be on plaintiff's credit
23 report, right?

24 A. Well, Equifax would have deleted the account, yes.

25 Q. Yeah. I'm just trying to understand the effect of the

Gobin Deposition - D

1 deletion. The deletion would have removed it from plaintiff's
2 credit report, right?

3 A. That's correct.

4 Q. And because of the response that Wells Fargo submitted on
5 this ACDV, Equifax kept reporting the Wells Fargo account on
6 plaintiff's credit report, correct?

7 A. Correct.

8 Q. All right. Would you turn to the next exhibit, which is
9 Exhibit 2.

10 A. Okay. I have that in front of me.

11 Q. And this is just two pages; is that right?

12 A. That's correct.

13 Q. Page 123 and 124?

14 A. Yes.

15 Q. And this is another ACDV that was sent by Equifax to Wells
16 Fargo, correct?

17 A. Yes, that's correct.

18 Q. And this one was created on November 13th, 2016, right?

19 A. Yes.

20 Q. And it identifies the consumer as Matthew J. Sponer,
21 right?

22 A. Yes.

23 Q. And the dispute is "claims true identity fraud, account
24 fraudulently opened, initiate investigation," correct?

25 A. Correct.

Gobin Deposition - D

1 Q. So, again, Equifax expects Wells Fargo to do an
2 investigation to determine if the account was fraudulently
3 opened, correct?

4 A. Yes, that's correct.

5 Q. And Wells Fargo did respond to this ACDV; is that right?

6 A. Yes, they did respond.

7 Q. And it shows a response date of 12-2-2016, correct?

8 A. Correct.

9 Q. And the responder's name is Ashley Grier; is that right?

10 A. That's correct.

11 Q. And Equifax -- I'm sorry, Wells Fargo again checked the
12 "modify as shown" box, right?

13 A. Yes, that's correct.

14 Q. And so they were, again, telling Equifax to modify some of
15 the account information, right?

16 A. That's correct.

17 Q. But Wells Fargo did not tell Equifax to delete the
18 account, did it?

19 A. They did not ask us to delete it, that's correct.

20 Q. And based on their response, Equifax would keep reporting
21 the account, right?

22 A. That's correct.

23 Q. All right. Looking at Exhibit 3, this is another ACDV; is
24 that right?

25 A. Yes, it is.

Gobin Deposition - D

1 Q. And this was sent by Equifax to Wells Fargo, right?

2 A. Yes.

3 Q. And looking at Exhibit 3, Wells Fargo sent a response that
4 has a response date of December 2nd, 2016; is that right?

5 A. Yes, that's correct.

6 Q. And they checked the box "modify as shown," right?

7 A. Yes.

8 Q. And Equifax would understand from this response that Wells
9 Fargo did not determine that the account was fraudulently
10 opened; is that right?

11 A. That's correct.

12 Q. And as a result of this response by Wells Fargo, Equifax
13 kept reporting this account on plaintiff's credit report,
14 correct?

15 A. That's correct.

16 Q. All right. Could you turn to Exhibit 4.

17 A. Okay. I have Exhibit 4.

18 Q. And this is an ACDV that was sent by Equifax to Wells
19 Fargo, correct?

20 A. Yes, that's correct.

21 Q. And Wells Fargo responded, and there's -- is that right?

22 A. Yes. There's a response date, yes.

23 Q. And the response date is 11-24-2017; is that right?

24 A. Yes.

25 Q. And Wells Fargo checked the box "verified as reported."

Gobin Deposition - D

1 Do you see that?

2 A. I do, yes.

3 Q. And so by that, Wells Fargo is saying that they believe
4 all the information that Equifax has on the account is
5 accurate, right?

6 A. That's correct.

7 Q. Would you look at Exhibit 5.

8 A. Okay. I have 5 before me.

9 Q. And this is an ACDV that was sent by Equifax to Wells
10 Fargo, correct?

11 A. Yes, that's correct.

12 Q. And Wells Fargo responded on or about November 28th, 2017;
13 is that right?

14 A. Yes.

15 Q. And they checked the box to read "disputed info accurate,
16 updated account info unrelated to the dispute"; is that right?

17 A. Yes.

18 Q. Okay. And by "disputed info accurate," does that mean
19 that they're saying that it's not identity fraud?

20 A. I think it speaks for itself. They're saying that the
21 information that was disputed is accurate.

22 Q. And based on this response, is it Equifax's understanding
23 that Wells Fargo investigated the account and did not
24 determine it was identity fraud?

25 A. Yes, that's correct.

Gobin Deposition - D

1 Q. And based on this response, Equifax continued to report
2 the account on plaintiff's credit report, right?

3 A. Yes, that's correct.

4 Q. Would you turn to Exhibit 6.

5 A. I have 6 in front of me.

6 Q. And this is an ACDV sent by Equifax to Wells Fargo,
7 correct?

8 A. Yes.

9 Q. And Wells Fargo responded, and there's a response date of
10 11-30-2017; is that right?

11 A. Yes, that's correct.

12 Q. And they responded that -- by checking the box "disputed
13 info accurate, updated account info unrelated to the dispute,"
14 right?

15 A. Right.

16 Q. And so essentially Wells Fargo is telling Equifax that the
17 account is not identity fraud, right?

18 A. That's correct.

19 Q. And based on this response from Wells Fargo, Equifax
20 continued to report the account on plaintiff's credit report,
21 right?

22 A. Correct.

23 Q. Would you turn to Exhibit 7.

24 A. I have Exhibit 7.

25 Q. And this is an ACDV sent by Equifax to Wells Fargo,

Gobin Deposition - D

1 correct?

2 A. Yes.

3 Q. All right. And then Wells Fargo responded, and there's a
4 response date of December 4th, 2017; is that right?

5 A. Yes.

6 Q. And their response was to check the box "disputed info
7 accurate, updated account info unrelated to dispute"; is that
8 right?

9 A. Yes, that's correct.

10 Q. All right. And that response essentially tells Equifax
11 that Wells Fargo does not believe the account is identity
12 fraud, right?

13 A. That's correct.

14 Q. And if Wells Fargo thought it was identity fraud, then
15 they should have checked either "delete account" or "delete
16 fraud," right?

17 A. Yes, that's correct. They would have chosen "delete" in
18 either of those two fashions in order to have it removed.

19 Q. Because if it is identity fraud, then it shouldn't be on
20 plaintiff's credit report, right?

21 A. That's correct.

22 Q. And based on this response, Equifax continued to keep the
23 account in plaintiff's credit file, right?

24 A. Yes.

25 Q. And then when that credit file got issued to a third

Gobin Deposition - D

1 party, it would include the Wells Fargo account, right?

2 A. Yes.

3 Q. All right. Will you turn to Exhibit 8.

4 A. Okay. I have 8 in front of me.

5 Q. And this is an ACDV from Equifax to Wells Fargo?

6 A. That is correct.

7 Q. And Wells Fargo responded with a response date of
8 12-4-2017; is that right?

9 A. Yes, that's correct.

10 Q. And they checked the box "verified as reported"; is that
11 right?

12 A. Yes.

13 Q. And so that was an indication to Equifax that it was not
14 identity fraud, right?

15 A. That's correct.

16 Q. By checking the box "verified as reported," Wells Fargo is
17 essentially telling Equifax that this account belongs to
18 Matthew Sponer, right?

19 A. Essentially, yes.

20 Q. And as a result of that response from Wells Fargo, Equifax
21 kept reporting the account, right?

22 A. Yes, that's correct.

23 Q. Okay. Would you look at Exhibit 9.

24 A. I have Exhibit 9.

25 Q. And this is an ACDV sent by Equifax to Wells Fargo,

Gobin Deposition - D

1 correct?

2 A. Yes.

3 Q. And Wells Fargo responded with a response date of
4 12-22-17?

5 A. Yes.

6 Q. And they checked the box "verified as reported," right?

7 A. Yes.

8 Q. So they were telling Equifax to keep reporting this
9 account, right?

10 A. They -- they verified that the data is reporting correctly
11 as it is.

12 Q. And as a result of this response, Equifax continued to
13 report this account on plaintiff's credit report, right?

14 A. Yes, continued to report it to the credit file, yes.

15 Q. All right. Would you look at Exhibit 10.

16 A. I have that in front of me.

17 Q. And this is called "terminal audit info." Do you see
18 that?

19 A. I do.

20 Q. All right. And this would reflect that one of your
21 subscribers requested a report for plaintiff, right?

22 A. That -- that is correct.

23 Q. And it indicates, also, that a report for plaintiff was
24 provided to that subscriber, right?

25 A. That's correct.

Gobin Deposition - D

1 Q. And that -- that would have -- the report would have been
2 issued on March 6th, 2017; is that right?

3 A. Correct.

4 Q. Can you tell who that inquiry company is, based on either
5 the subscriber number or that information with the FOR?

6 A. Well, I know it to be an insurance company simply because
7 I know the initials in the middle of the number are IG, but I
8 don't recall. I did look at it, but I don't recall the actual
9 name of the company.

10 Q. So you know it's an insurance company because of the IG,
11 right?

12 A. Yes.

13 Q. And what about Foremost Insurance? Do you think it could
14 be them?

15 A. That sounds about right, yes.

16 Q. Would you turn to page 757, which is the next page.

17 A. Okay. I have that.

18 Q. All right. And this indicates that a company made a
19 request for plaintiff's credit file on or about December 21st,
20 2017, correct?

21 A. That's correct.

22 Q. And they received his file, right?

23 A. It does appear they did, yes.

24 Q. All right. And can you identify which company it is?

25 A. I know from the member number that it's a bank. The BB in

Gobin Deposition - X

1 that number is for a bank.

2 MR. SOLA: Go ahead. Cross-examination.

3

4

CROSS-EXAMINATION

5 BY MR. FRANSEN:

6 Q. Hi, Ms. Gobin. My name is Tim Fransen. I'm an attorney
7 representing Wells Fargo in this case, and I have a couple
8 questions for you, mainly just to clarify or get a little bit
9 more detail on some questions Mr. Sola asked you.

10 I assume you understand you're still under oath for
11 my questions as well?

12 A. Yes.

13 Q. Okay. My question for you is -- and I don't -- I'm not
14 intending to get into any details of any investigations
15 Equifax may or may not do, but is it true that Equifax does
16 its own investigation at times, depending on the dispute
17 raised by the consumer?

18 A. That is correct.

19 Q. Okay. And, again, I don't -- I'm not interested in any
20 details at all about this account even, but is it possible for
21 Equifax to delete an account or to stop reporting an account
22 even if a furnisher doesn't tell them to delete the account?

23 A. Yes, that is correct.

24 MR. SOLA: That's the end of this witness.

25 THE COURT: And for our record -- I know you're

Tarter - D

1 playing the part of Celestina Gobin. Can you tell us your
2 name?

3 MS. MORENO: Michelle Moreno.

4 THE COURT: Thank you. You may step down.

5 Call your next witness.

6 MR. SAND: Plaintiff calls Tom Tarter.

7 THE CLERK: There are a couple stairs right there.

8

9 THOMAS TARTER

10 called as a witness in behalf of the Plaintiff, having been
11 first duly sworn, is examined and testifies as follows:

12

13 THE CLERK: Please have a seat. State your name and
14 spell it.

15 THE WITNESS: Thank you.

16 My name is Thomas Tarter. Last name is spelled
17 T-a-r-t-e-r.

18

19 DIRECT EXAMINATION

20 BY MR. SAND:

21 Q. Mr. Tarter, what is your current profession?

22 A. I am primarily a consultant, and the predominance of my
23 work involves expert witness services.

24 Q. And do those expert witness services have a focus?

25 A. Yes, primarily involving banking and financial

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1 institutions.

2 Q. Can you describe for the jury your experience in the
3 banking industry?

4 A. Yes, sir. I started my banking career in 1967 while I was
5 assigned to Fort Ord and served as an ex officio member of the
6 Fort Ord Credit Union.

7 In 1969 I started my more intensive consumer and
8 commercial banking career, and that included consumer credit
9 as well as commercial credit.

10 During my period of direct banking, I was the
11 president of two banks. One was a troubled bank, where I was
12 approved by the FDIC and the Office of the Controller of the
13 Currency, because if you're working for a troubled bank,
14 there's a reason for it, and they want to approve whoever
15 would be an officer of that bank.

16 Q. And, Mr. Tarter, has your experience in banking involved
17 handling consumer credit disputes?

18 A. It has, both from a mortgage as well as indirect lending
19 programs, where loans are purchased from car dealers, used or
20 new.

21 Q. Has your experience in banking involved disputes of
22 identity theft?

23 A. Yes, on a number of occasions.

24 Q. About how many times have you been retained as an expert
25 in the banking industry?

Tarter - D

1 A. Well, probably now more than 1600, but -- excuse
2 me -- this is over a 25-year period of time. So it could be
3 higher.

4 Q. In connection with your experience, have you become
5 familiar with the industry standards for banks handling
6 consumer credit reporting disputes?

7 A. I have. And that included while I was doing work as a
8 retained expert by Gonzaga University's law school, on behalf
9 of some of their clients, as well as Harvard University's law
10 school, on behalf of some of their students, and cases that
11 they were involved with. And the standards haven't really
12 changed since I started in banking.

13 Q. Well, let me ask you this. The jury has heard the term
14 "ACDV" a lot in the course of this trial. What is the
15 standard for banks when investigating an ACDV?

16 A. Well, there are several. The first -- and these aren't in
17 a direct order. I shouldn't have said "the first." But
18 basically being timely, being accurate, being fair, and being
19 honest, and have an established and an enforced internal
20 control set of systems.

21 Q. Now, you mentioned, I think, four things: timely,
22 accurate, fair, and honest. What is the industry standard in
23 banking, when conducting an ACDV, to ensure accuracy?

24 A. To --

25 Q. To ensure -- I'm sorry.

Tarter - D

1 A. To have established and enforced policies and procedures
2 and systems, such as, in this case, that everybody could speak
3 to everybody else within the bank, and that there would be a
4 thorough investigation. And by "thorough," not just
5 departmental, but you could -- if you're reading the iTop
6 notes, you would be able to see exactly what was happening,
7 and you'd know that there was a sequence of events that
8 involved a police department, an acknowledgment, the bank had
9 a record of knowing their customer. He's not just an isolated
10 customer, but a person who was sailing offshore and had
11 notified Wells that they were not going to be in the country,
12 but "Don't stop my credit card payments, not only payments,
13 but charges, because I'm going to be basically living off of
14 my credit card."

15 So they already had prior knowledge. And, among
16 other things that they had in their file, they knew that this
17 was a high-risk loan because it wasn't directly originated by
18 Wells. It was bought from a third party, a used car dealer.
19 This was not a new vehicle.

20 And, as a result, indirect loan programs, ILP, are
21 known in the industry to have a greater degree of risk than if
22 a customer walks through the door and says, "I would like to
23 buy a car. Will you make a loan to me?" Much different.

24 Q. In your opinion, does Wells Fargo meet the industry
25 standards for investigating consumer credit disputes of

Tarter - D

1 identity theft?

2 A. In this case, absolutely no.

3 Q. And why do you say "no"?

4 A. Well, let's look at the history. There's a mountain of
5 information available.

6 Wells knew that this was -- I'll call it an ILP,
7 indirect loan program. It had a history with its customer.
8 It had another account product that it would sell. It also
9 had spoken with the police department in Southern California,
10 in Chula Vista. It can't get much better than that. They
11 went right to the source.

12 But there were no payments made. And going back to
13 the first payment default, that should have set off red flags,
14 which are warning signs, because the account number that was
15 given was disputed by the person whose account was drawn on
16 and was rejected. There were never any payments made on this
17 loan.

18 Q. Wells Fargo had, early on, asked Mr. Sponer to submit his
19 Social Security card so that it could proceed with its
20 investigation. Was this within the industry norm?

21 A. No, sir, not generally. It really wasn't needed because
22 if you're an ID theft -- thief, chances are highly likely that
23 the Social Security card that they're asking to have a copy
24 of, that number will match the one that they wrote the loan
25 on. So it's really not necessary, particularly in view of all

Tarter - D

1 of the information that it had in its files.

2 I used the term before, "a mountain." It was a big
3 pile.

4 Q. Does Mr. Sponer's Social Security card have any bearing on
5 whether the account was opened by an identity thief?

6 A. Card? No, sir.

7 There are hackers out there all the time who steal
8 IDs. And included in the police report is a reference. I
9 mean, the thief here was -- there were other people who were
10 also victims.

11 Q. Would it have been within industry standards for Wells
12 Fargo to wait to investigate this account because it was
13 waiting for Mr. Sponer to call them?

14 A. That's absurd. No, sir.

15 Q. Why do you say that's absurd?

16 A. Because it had all sorts of information. I mean, the
17 reality is they had spoken with the police department. The
18 police department had indicated it was ID theft, that they had
19 the culprit, the thief. They had the car. I mean, it doesn't
20 get much better than that. You're not fishing around. You
21 have information that is really, I would say, rock solid.

22 Q. Do you recall how many ACDV disputes Wells Fargo received
23 related to Mr. Sponer's identity theft dispute?

24 A. I believe I do. I think it was 10.

25 Q. And did Wells Fargo delete the account in response to any

Tarter - D

1 of those ACDV investigations?

2 A. No, sir.

3 Q. Is that something that might raise a red flag within the
4 industry, when there are multiple ACDV disputes?

5 A. Sure. The reason -- if you have multiple disputes, and
6 you look at the body of information that's in the file,
7 something is wrong, and it should elevate to some higher legal
8 of management that would say, "We're jerking this man around.
9 He didn't do anything wrong. We should come to a bottom line,
10 and maybe there is a degree of -- there's a high probability
11 that this man is not lying to us." And that's where
12 management should step in.

13 Q. Based on the information that Wells Fargo had in its file,
14 how many disputes do you believe it should have taken for
15 Wells Fargo to delete the account?

16 A. Well, you could say one, but even before it got there, it
17 should have investigated it, the underwriting. And they
18 should have deleted it immediately upon them becoming aware of
19 the ID thief and having spoken with the police department.
20 This isn't rocket science. This is pretty simple, I think.

21 Q. Do you have an opinion about Mr. Sponer's efforts over the
22 course of the 14 months to get Wells Fargo to delete this
23 fraudulent account from his credit report?

24 A. Yes, sir.

25 Q. What is your opinion?

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1 A. I think he worked pretty hard. And it takes time to
2 dispute. The first effort indicated responsibility. He was
3 in the South Pacific. He asked an attorney to send a letter
4 and send relevant information to Wells. And even before, he
5 had contacted Wells. So they should have known he was
6 legitimate.

7 Q. In your 50-plus years of experience in the banking
8 industry, do you have an opinion about why a bank might have
9 investigation procedures that fall short of industry
10 standards?

11 A. Sure.

12 Q. What is that opinion?

13 A. It's been my opinion that the reason is that fraud
14 departments or ACDV dispute departments are not profit
15 centers. So they have them, they operate them, but they don't
16 invest the amount of money. They try to minimize it simply
17 because the fraud department or the ACDV department isn't
18 generating revenue.

19 So it might be cheaper just to pay legal expenses or
20 try to enter into settlements with clients who are really
21 innocent. It never should be a situation.

22 Q. Earlier the jury heard Wells Fargo employees testify, the
23 ACDV employees we heard testify that they have a production
24 quota of approximately 10 disputes per hour for identity
25 theft --

Tarter - D

1 A. Yes.

2 Q. -- identity disputes.

3 Do you have an opinion about production quota for
4 ACDV investigators?

5 A. Yes.

6 Q. What is that opinion?

7 A. It limits their productivity, having the quota, relative
8 to their ability to dig in, pull up files, read it, and go to
9 their supervisor. I mean, we're talking about time. And time
10 is valuable. And, you know, you're talking -- and the range
11 here today has been five to 10. But 10 is not an unusual
12 number that I've seen. And that's one every six minutes, just
13 to open the file, read the file, go on the computer -- it all
14 takes time -- and then to go to your supervisor if something
15 just doesn't seem right. And if you're getting 10 ACDVs and
16 you're getting other information -- this should have been
17 escalated right away.

18 Q. In your experience, your 50-plus years of experience in
19 banking, have you ever seen a company that has procedures that
20 prohibit ACDV investigators from investigating identity theft?

21 A. No, sir. And I've seen the policies and procedures of
22 many of the large banks. And no.

23 Q. All right. Thank you.

24 MR. SAND: No further questions.

25 THE COURT: Cross-exam.

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CROSS-EXAMINATION

BY MR. PETERSON:

Q. Good afternoon, Mr. Tarter. I have a couple questions.

You testified, I believe, that you have been retained in approximately 1600 or more cases?

A. Yes. And that would involve almost close to 300 depositions, trials.

Q. And that was my next question.

I believe when we talked before, you told me that you had testified approximately 300 times, correct?

A. Yes, sir.

Q. And in how many of those 300 times of testifying have you testified that the bank did it right?

A. In a number of occasions, because my role -- I'm independent. And if I think the bank did it right, I tell them, because a gentleman such as yourself is later going to be asking me questions, and so it would be a slippery slope not to tell the truth.

Q. And you told me before that you're primarily hired by attorneys for the consumer, correct?

A. In consumer credit, yes. But I do a fair amount of work involving commercial loans as well as loans that might relate to general banking or financial matters.

Q. And in how many times -- in how many cases that you've testified on behalf of the consumer have you testified that

Tarter - X

1 the bank or the CRA did it right?

2 A. I can't give you a number, but --

3 Q. You don't know?

4 A. No, I don't, because I've had a lot of cases. But I have
5 told them -- I've also been hired by insurance companies. And
6 they want to know the bottom line: Is there something wrong
7 or not? And also in the consumer area, credit unions I do a
8 lot of work with. They want to know if their policies and
9 procedures are consistent or auditable, a certain number of
10 loans.

11 Q. You testified about the iTop notes. Do you remember that
12 testimony?

13 A. iTop, yes, sir.

14 Q. And I believe you testified that those weren't available
15 to be seen by the Wells Fargo -- by the ACDV operators? Is
16 that your testimony?

17 A. At the time, I thought that. And you're speaking --

18 Q. Well, I think that was just a few minutes ago that you
19 testified.

20 A. No.

21 Q. Did I misunderstand?

22 A. I thought you mentioned at the time of my depo.

23 But I was, and I heard the same discussion and
24 testimony that everybody heard here this afternoon.

25 Q. The ACDV operators at Wells Fargo did have access to the

Tarter - X

1 iTop notes, correct?

2 A. Yes, sir.

3 Q. You testified about the mountain of information that Wells
4 Fargo had, correct?

5 A. Yes, sir.

6 Q. And that information came in over a period of months,
7 correct? They didn't have all that information right at the
8 beginning of the dispute, did they?

9 A. Well, we have to look at timing. But in the beginning,
10 they had a lot of information.

11 Q. That wasn't my question, though. They didn't have all the
12 information, the mountain you're referring to, correct? They
13 didn't have the formal police report, did they?

14 A. They had spoken to the police.

15 Q. That wasn't my question, Mr. Tarter. Did they have the
16 police report before January of 2017?

17 A. I can't say. I don't know.

18 Q. Did they have the fraud affidavit before January of 2017?

19 A. No. But they didn't need that.

20 You have to be reasonable and look at the facts that
21 are laid out in front of you. I mean, if you're trying to go
22 back and create a track, that's really, in some ways, victim
23 blaming. I mean, you would think, if you had a \$30,000
24 loan --

25 THE COURT: Mr. Tarter, can I direct you to just

Tarter - X

1 answer the question? And if there's more explaining to do,
2 you can bet that the other side is going to give you an
3 opportunity to do that.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Thank you.

6 Ask your next question.

7 BY MR. PETERSON: (continuing)

8 Q. You talked about the fact that Wells Fargo received 10
9 ACDVs over the period of the year should have been a red flag.
10 Do you recall that testimony?

11 A. Yes, sir.

12 Q. It's true, isn't it, that some credit repair agencies or
13 other such similar groups actually recommend flooding the
14 banks with ACDVs, don't they?

15 A. Not necessarily. It depends.

16 Q. But they do recommend that sometimes?

17 A. It depends on whether they're a legitimate credit repair
18 organization or not. But sometimes, yes.

19 Q. If a consumer were to search the Internet and say, "What's
20 the best way to fix my credit?," they'd find that there's lots
21 of recommendations that say, "Flood the banks with ACDVs,"
22 correct?

23 A. Yes, sir, there's information out there.

24 Q. You testified that Mr. Sponer worked hard on this issue.
25 I think we've all heard that. We would all agree with that.

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1 That was your testimony, correct?

2 A. Yes, sir.

3 Q. And isn't it also true that because of the difficult
4 nature of identity theft, just by its very nature, it requires
5 participation by the consumer?

6 A. In many cases, yes, sir, but not necessarily.

7 Q. You, I believe, testified that banks have an incentive to
8 underfund their dispute resolution departments, their ACDV
9 departments. Was that your testimony?

10 A. In some ways not adequately fund it, yes, sir, that's
11 correct.

12 Q. And that's an indictment on the entire banking industry?
13 That has nothing to do specifically with Wells Fargo, does it?

14 A. Well, some banks are more egregious than others. But from
15 a general perspective, there are some other financial
16 institutions that do that.

17 Q. But you don't have any information that that's what Wells
18 Fargo intentionally does, do you?

19 A. That is the general feeling that I have, having read about
20 all of the internal problems that Wells Fargo has had.

21 MR. PETERSON: I don't have any further questions.
22 Thank you.

23 THE COURT: Redirect?

24 MR. SAND: Yes, Your Honor.

25

Tarter - ReD

REDIRECT EXAMINATION

BY MR. SAND:

Q. We talked about the 2016 time frame and that Wells Fargo did not have a police report in that time frame from Mr. Sponer. Do you recall that testimony a minute ago?

A. Yes, sir.

Q. Could Wells -- in your opinion, could a bank like Wells Fargo contact the police and ask for a police report?

A. Sure, yes.

Q. Would that be within industry norms?

A. Yes, sir.

Q. How about in a situation, also, where the bank is in contact with the police during that time frame?

A. Yes, sir. That's why I said you couldn't get better feedback or support or evidence.

Q. All right. Thank you.

MR. SAND: No further questions.

THE COURT: You may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: And do you want this witness to be excused?

MR. SAND: Yes.

THE COURT: Any objection?

MR. PETERSON: No objection.

THE COURT: You may step down.

1 Members of the jury, we're going to take our mid
2 afternoon recess at this time. We'll be in recess for about
3 15 minutes.

4 Jennifer will escort you out.

5 Mr. Tarter, you can go ahead and step down.

6 THE WITNESS: I was just going to wait. I move
7 pretty slowly these days.

8 THE COURT: Thank you very much.

9 MR. PETERSON: Your Honor --

10 (The jury leaves the courtroom.)

11 THE COURT: What do you need?

12 MR. PETERSON: I think, unless I'm incorrect, we're
13 getting near the end of plaintiff's case.

14 MR. SAND: That's correct.

15 MR. PETERSON: We will have a couple issues for the
16 Court at the close of plaintiff's case. I just wanted to
17 alert the Court so --

18 THE COURT: Can we take those up after you call your
19 witnesses and the jury is gone for the afternoon?

20 MR. PETERSON: That would be fine with us, Your
21 Honor.

22 THE COURT: And you can reserve whatever motions that
23 you would have made. I will consider the evidence that was
24 received only in plaintiff's case in chief.

25 MR. PETERSON: Thank you.

1 THE COURT: Is that acceptable to you?

2 MR. PETERSON: That works for us.

3 THE COURT: Is that acceptable to the plaintiff?

4 MR. SOLA: Do you mean judgment as a matter of law
5 motions?

6 THE COURT: Correct, halftime motions.

7 So he wants to make halftime motions. I don't want
8 to interrupt the flow of the trial. I want to take them up
9 after I let the jury go for the afternoon.

10 MR. SOLA: Okay, Your Honor.

11 MR. PETERSON: And then, Your Honor, our
12 understanding from the pretrial conference was we might talk
13 about jury instructions today at the close of evidence. Is
14 that still on the schedule?

15 THE COURT: I hope so.

16 MR. PETERSON: Okay.

17 THE COURT: I'm still kind of wrestling with it for a
18 little bit.

19 MR. PETERSON: Okay.

20 MR. SOLA: Actually, we had a small revision to one
21 of our suggested instructions, and maybe we'll just raise that
22 later.

23 MR. PETERSON: Thank you, Judge.

24 THE COURT: Thank you. We're in recess.

25 (A recess is then taken.)

Hendricks - D

1 (The Court, counsel, the parties, and the jury
2 reconvene.)

3 THE COURT: There is one more commercial I want to
4 leave you with so I don't forget.

5 The reporter from The Oregonian was in the back of
6 the courtroom for a portion of the testimony that was given.
7 That alerts me there might be a story coming out as regards
8 this case. I would direct you not to read anything in the
9 newspaper as regards this case. It might appear this evening
10 or tomorrow or on Oregonlive. Just avoid any stories about
11 it. Just ignore it, if you wouldn't mind.

12 Thank you.

13 Call your next witness.

14 MR. SAND: Plaintiff calls Evan Hendricks.

15 THE CLERK: Please raise your hand.

16
17 EVAN HENDRICKS

18 called as a witness in behalf of the Plaintiff, having been
19 first duly sworn, is examined and testifies as follows:

20
21 THE CLERK: Please have a seat. State your name and
22 spell it.

23 THE WITNESS: Good afternoon. My name is Evan
24 Hendricks. It's E-v-a-n H-e-n-d-r-i-c-k-s.

25

Hendricks - D

DIRECT EXAMINATION

BY MR. SAND:

Q. And, Mr. Hendricks, can you tell the jury a little bit about your professional background?

A. Sure. I've been following the credit reporting industry for more than 40 years now. When I got out of school -- I went to University of Oregon for two years, then transferred to Columbia. After that I got a job at a newsletter company, in September 1977, writing a specialized newsletter for professionals and lawyers called Access Reports Privacy, which covered the Fair Credit Reporting Act and other privacy laws.

And three years later that company dissolved, and I started my own newsletter called Privacy Times in January 1981. And that's where I continued to report on information privacy issues, like the Fair Credit Reporting Act, because that was the very first information privacy law passed in the United States in 1970. And so it was a newsletter for specialists in the field.

And I accumulated a lot of specialized knowledge following the industry doing that for 33 years. And I finally closed the newsletter in December 2013.

Q. Have you been recognized as an expert in the field by any members of government?

A. Yes. I've served as a member of the panel of privacy experts of the U.S. Social Security Administration. I also

Hendricks - D

1 have been invited to testify to Congress 10 times. It's
2 always by invitation, most of the time on credit reporting
3 issues, sometimes on other financial privacy issues.

4 Q. As part of your credit reporting experience, how much of
5 it -- or could you describe for the jury what part of it is
6 involved in identity theft?

7 A. Oh, yes. Well, identity theft is, like, intertwined with
8 credit reporting, because identity theft first came on the
9 radar through credit reporting, TransUnion studies showing
10 there were 35,000 inquiries back in 1992. Then the number of
11 them went up like a hockey stick on the chart. And by 2000 it
12 was recognized that identity theft was epidemic. There was
13 like 9 to 10 million victims per year.

14 And the reason it's tied to credit reporting is
15 because it's a direct threat to credit reporting accuracy. If
16 the thief steals the identity and then creates an account that
17 goes on the victim's credit report, that's per se inaccurate.
18 And so that was actually recognized.

19 And when I talk about testifying before Congress, in
20 2003 Congress dedicated the entire year to strengthening the
21 Fair Credit Reporting Act to make it better against identity
22 theft, to help victims. And I testified before the Senate
23 Banking Committee and the House Financial Services Committee
24 that year and contributing ideas of how to make it better for
25 consumers, put stronger duties on the furnishers relating to

Hendricks - D

1 their credit report accuracy.

2 Q. Have you been recognized as an expert in the field by the
3 credit reporting industry?

4 A. Yes. I served on -- during that time period, for two
5 years I served on, by invitation, on Experian's Consumer
6 Advisory Council. They had a panel of experts of people like
7 me, people from industry, American Express, Capital One --

8 THE COURT REPORTER: I'm going to have you slow down.

9 THE WITNESS: So I did that for two years.

10 Then when Equifax did an opinion survey on
11 information privacy, in the acknowledgements they acknowledged
12 their thanks for my contribution to their survey.

13 BY MR. SAND: (continuing)

14 Q. And, Mr. Hendricks, it sounds like maybe you've been asked
15 to slow down by a court reporter before.

16 A. Yes. Even by judges, too.

17 Q. Have you published any books?

18 A. Yes. I've published several books, but the most relevant
19 one for us today is my book "Credit Scores and Credit Reports,
20 How the System Really Works, What You Can Do." I first wrote
21 that in 2004, after that 2003 year I told you about. And then
22 there came two more editions, so there's three editions all
23 together. It's a 400-page book with lots of footnotes and it
24 covers -- I don't know -- about 20 chapters.

25 But it covers -- the first part of the book covers

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1 how the credit scoring system works, because that's the first
2 thing people are interested in. You hear about credit scores.
3 And it goes on to explain the credit scores. The next 15 or
4 so chapters explains how the credit reporting system works,
5 and because all the information in the credit score is based
6 on information in your credit report.

7 Q. How long have you been serving as an expert regarding the
8 credit reporting industry and identity theft?

9 A. I started regularly doing expert witness work probably
10 about 12, 15 years ago. I was still doing my newsletter, got
11 retained in a few cases as an expert, and then it just kept
12 snowballing and taking more and more of my time.

13 Q. And how has serving as an expert helped provide you with
14 specialized knowledge in the industry?

15 A. I think that's important, because the policies, practices,
16 and procedures of the participants in the credit reporting
17 industry, like the big three credit bureaus, the furnishers
18 like Wells and Chase and all the rest of them, those are not
19 publicly available. But because I'm an expert, I get to sign
20 a protective order and I get to review those as part of the
21 case, so I get to accumulate all the specialized knowledge
22 about what are their practices and procedures. And even more
23 importantly, like you see here, I get to read deposition
24 testimony. So they talk about, well, how do we apply these in
25 specific situations.

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1 Q. I'd like to start with some basics, because we've used a
2 lot of terminology in this case.

3 What is a credit report?

4 A. A credit report is a compilation of information that
5 reflects your credit history. It typically has three parts to
6 it, and that's -- the top part is the identification, shows
7 your identifiers. The second part is the biggest part
8 usually. That has your credit history, all your accounts,
9 which they call trade lines. And the third part is the
10 inquiries, showing who has accessed your credit and for what
11 purpose.

12 Now, some people will have a fourth part, which you
13 don't want to have, and that's public records, and that
14 includes tax liens and bankruptcy and things that are usually
15 very derogatory.

16 Q. How is a credit report created?

17 A. It's created -- you saw a chart, which was very good, in
18 the opening, that the furnishers -- which you know what it
19 means by now -- the creditors furnish that information through
20 electronic means nowadays to the big three credit reporting
21 agencies.

22 The credit reporting agencies compile that
23 information and they assemble it. And then through the
24 identifiers, they're able to assign the trade line or account
25 information to individual consumers through a matching process

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1 that they have.

2 And another thing that they do is they collect
3 information, have vendors go to courthouses and get that
4 public record information in case you're going to have that
5 section 4 I mentioned.

6 Q. Is there a standard for the information in credit reports?

7 A. There are many standards, but by far the most important
8 standard in the credit reporting industry is accuracy, because
9 it's -- everything depends on accuracy. And all the policies
10 are built around trying to assure accuracy or restore it.

11 Q. And you talked about furnishers. What is a furnisher like
12 Wells Fargo's role in ensuring the accuracy of information in
13 credit reports?

14 A. Well, their most important role -- they have a couple.
15 But the most important role that a furnisher like Wells has in
16 the accuracy regime is, after getting an ACDV dispute, to
17 conduct a reasonable investigation and determine whether
18 disputed information is accurate or not accurate. And if they
19 can't verify that it's accurate, they're supposed to delete
20 it. That's the standard.

21 Q. And that actually brings me to my next question. If a
22 consumer finds inaccurate information in their credit report,
23 how do they go about disputing that information to get the
24 credit report accurate?

25 A. Well, the best way -- and, actually, in my book I say that

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1 you -- you make your rights the strongest and you make the
2 creditor's duty the strongest as well, the duty to do it, is
3 when you dispute through the credit reporting agencies,
4 because the law set up this filtering process so that -- you
5 know, when they first -- in the 1996 amendment -- remember, I
6 said it was enacted in 1970. Well, for the first 26 years
7 there was no duty on furnishers. They added those in 1996.
8 But they didn't want -- they wanted to make sure the disputes
9 continued to go through the credit reporting agencies.

10 So answering his question, I'm saying that consumers
11 dispute to the credit reporting agencies. And then the credit
12 reporting agencies, as you've now seen, forwards that dispute
13 to the furnisher; and that's kind of a filtering process
14 that's built into the system.

15 I also think it's a good idea to -- I recommend doing
16 direct disputes as well, so you have the direct dispute going
17 to the furnisher and you have the other dispute going to the
18 CRA. So you maximize the chances of getting bad information
19 corrected.

20 Q. Okay. And the jury has heard the term "ACDV" a lot. And
21 in those two different methods you talked about, where does
22 the ACDV fall?

23 A. That's the indirect dispute or the one through the credit
24 reporting agencies. They're the ones that when you dispute to
25 them, as you've seen, they create the ACDV; and then they

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1 forward that, the ACDV, which then the furnisher uses to
2 respond with its instructions to the credit reporting
3 agencies.

4 Q. And what must a furnisher do -- a furnisher like Wells
5 Fargo do upon receiving a consumer's ACDV dispute from the
6 credit reporting agency?

7 A. Well, they're supposed to do an investigation. And the
8 purpose -- the investigation is supposed to have a purpose.
9 It's supposed to determine whether the disputed information is
10 accurate and/or complete. So if they fail to do that and they
11 cannot verify it, then they're supposed to delete it. But
12 their investigation has to be reasonably calculated. So
13 depending on what the consumer has disputed, they're looking
14 at the right information, they're asking the right questions,
15 they're taking the right investigative steps.

16 Q. And how are furnishers like Wells Fargo on notice of their
17 responsibility to conduct a reasonable investigation?

18 A. Well, the -- what's really important to understand
19 here -- that's a good question, because many years before
20 Mr. Sponer became the victim of identity theft or made any of
21 the disputes here, furnishers like Wells Fargo were on notice
22 that doing the kind of superficial comparison of identifiers
23 that they did in this case was wholly unacceptable.

24 The industry -- notice was given to the industry, you
25 know, 10 years ago and even farther back that that does not

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1 amount to a reasonable investigation and that you have to
2 consider the relevant information, its relevance to the
3 dispute, and you have to do a close examination or a searching
4 inquiry that requires some degree of care to turn up
5 what -- if the information is accurate or not.

6 MR. PETERSON: Your Honor, may I ask a question in
7 aid of objection?

8 THE COURT: Sure.

9 MR. PETERSON: Mr. Hendricks, what put the furnishers
10 on notice 10 years ago?

11 THE WITNESS: That was done by the -- FCRA has
12 various enforcement authorities, and the -- so there were a
13 couple of enforcement authorities that gave specific notice on
14 what kind of standards that furnishers had to follow to
15 qualify as a reasonable investigation.

16 So the FCRA's enforcement authorities include the
17 FTC, the CFPB, the state attorney generals, and the courts.

18 THE COURT: You may proceed.

19 BY MR. SAND: (continuing)

20 Q. So let's talk about what brings you here today. In light
21 of what you just discussed, can you tell the jury your opinion
22 about the investigations that Wells Fargo did in Mr. Sponer's
23 case?

24 A. Okay. Yes.

25 My opinion is that by the real meaning -- the plain

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1 meaning of the word "investigation," Wells Fargo never really
2 investigated the disputes because they didn't do a careful
3 examination. They didn't do a systematic inquiry.

4 They did -- what they did, as you heard, they just
5 compared the identifiers of the information that was on the
6 ACDV to what they had with an account.

7 Now, I think you've heard enough to understand my
8 opinion that in identity theft, the thief is using the Social
9 Security number of the victim, and so they're going to match.
10 That doesn't tell you what they did.

11 And the problem that I have with Wells Fargo is
12 that -- Wells Fargo Auto is that they didn't do a searching
13 inquiry, because they had the information in their own
14 possession. They had information from the police detective.
15 They had information from the ACDV saying it was fraud.
16 Eventually they had police reports. They had the fraud
17 affidavit. And they had the fraud block notice from
18 TransUnion. And they had other ACDVs indicating the fraud
19 disputes were flying all around with this.

20 And so I agree with Mr. Tarter who came before me:
21 They had a mountain of evidence. And not only did they not
22 use it, they disregarded all this information. This is the
23 information they should have been paying the most attention
24 to, but instead they disregard it and say, "Is this the same
25 Social Security number? Is this the same name?"

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1 And, to me, that's just wholly unacceptable because
2 it's so superficial.

3 Q. Let's talk about the chronology in this case a little bit.
4 Based on your review of the documents in the record and the
5 testimony, do you -- what was the earliest notice, in your
6 opinion, that Wells Fargo received that Mr. Sponer was the
7 victim of identity theft?

8 A. I believe that was Mr. Charne's letter, the most explicit
9 notice that it received.

10 Q. I'm going to -- the jury has seen this letter, but I'm
11 going to put it up briefly so you can discuss it. I'll get
12 this to zoom out a little bit.

13 Is this the letter that you were referring to?

14 A. Yes.

15 Q. And why -- in your opinion, why would this letter be
16 relevant to Mr. Sponer's ACDV disputes?

17 A. Yeah, because the big question is: What did Wells Fargo
18 know at the time that it received an ACDV? And so this is
19 relevant because an ACDV came after this. So by the time they
20 got an ACDV, they already knew the information in this letter.

21 And this information -- this is a really good letter.
22 It tells you the name of the police detective, gives his phone
23 number, tells them it's Chula Vista, California. It also
24 tells them that they're foreseeing that it's likely that there
25 could be reporting of really bad information, inaccurate

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1 information, to credit reporting agencies, and saying, "If
2 you've done that, please correct it. If you haven't done
3 that, don't do it."

4 So there's that. And they're telling them that
5 Mr. Sponer is a long-standing customer of Wells Fargo.

6 So Wells Fargo, if Wells Fargo -- in a system like
7 this, when you have disputes, you should have a mechanism to
8 remember what you already know. Now, they know Mr. Sponer is
9 a customer, but this letter is reminding them, and that he's
10 also saying, "Please don't cut off my credit cards, because
11 I'm depending on that."

12 Now, those credit cards have transactions showing
13 what he's buying and where he is and what time he's doing it.
14 It has very detailed information, the kind that police like to
15 get if they're investigating a crime.

16 And so Wells Fargo is sitting on all that
17 information, and it pretty much already verifies that -- could
18 verify, if they looked at it, if they considered it, but they
19 didn't. They disregarded it. They didn't even consider
20 looking at it.

21 Q. Mr. Hendricks, I'm going to show you another document.
22 This is Exhibit 43. Do you recognize this document?

23 A. Yes. This is the suspected unusual activity form that
24 someone in Wells Fargo did to make -- to memorialize this
25 letter that they received, so it would be in the system. So

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1 this is a way to -- a mechanism for trying to remember what
2 they're supposed to know and what they'll need to know later.

3 Q. And do you see the date on this document?

4 A. That says 10-19-2016.

5 Q. Do you recall if this document precedes Mr. Sponer's first
6 ACDV dispute?

7 A. Yes, it does.

8 Q. And could you read for the jury the description of unusual
9 activity field or summarize it?

10 A. Where it starts "type of activity, ID theft"?

11 Q. Yes.

12 A. Yes, it says, "Client was" -- this is where I've got to be
13 careful not to go too fast.

14 (Reading) Client was victim of identity theft.

15 Customer out of the country, was contacted by police
16 department BC -- because they arrested the suspect for getting
17 a BMW with his client's info. Doesn't want to affect client's
18 credit report. Client is a WF customer. No indication any
19 other WF accounts are compromised. Client's SSN ends in
20 2298 -- the whole one is listed there internally for Wells
21 Fargo.

22 Attorney will leave country November 1st and will be
23 back in February. Can contact James Charne, James, attorney,
24 phone number, starts with 310. Address is on Mifflin Street,
25 Madison, Wisconsin, and his e-mail address.

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1 Q. Now, this document, we said, precedes Mr. Sponer's first
2 ACDV dispute?

3 A. Yes.

4 Q. Okay. I'm going to have you take a look at Exhibit 32,
5 and these are the iTop notes. I'm going to turn to
6 page -- this is going to be page 21 of Exhibit 32. I'll zoom
7 in a little bit, make it easier to read.

8 A. That's good.

9 Q. Is that good?

10 A. Yes.

11 Q. Do you see an entry on 10-26-2016?

12 A. There's actually two. One's the encrypted one that says,
13 "Call Detective Edward Tugashov." And then "LMOVM" means left
14 message on voicemail.

15 And below that, would you like me to read the one
16 below that?

17 Q. Yes, please.

18 A. (Reading) Got a note from Will here on John Miller's team
19 that this vehicle was impounded. They give a number.

20 (Reading) Detective Edward Tugashov is the person we
21 need to contact to arrange to pick up the unit. They have
22 determined this is a fraud. We have not. We are waiting to
23 hear back from the victim. We need to arrange to take
24 possession of our unit ASAP.

25 Q. I'm going to have you look at one more entry on 10-26.

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1 This is actually on page 20. Let's see if the auto focus
2 kicks in. There we go.

3 Do you see the other 10-26 entry?

4 A. Yes.

5 Q. Can you read that for the jury, please.

6 A. Sure.

7 (Reading) Spoke with Detective Tugashov. He stated
8 that they are investigating this as fraud. Unit was purchased
9 by Jason Yochum, 10-4-79, after he stole customer's identity.
10 Unit will be held until 11-1 for investigation and will be
11 released to us then with no fees. Customer attorney is Jim
12 Charne.

13 Q. Okay. What is your opinion about the information we just
14 read in the iTop notes relevant to Mr. Sponer's upcoming
15 ACDVs?

16 A. Well, it's hard to put it any better than Mr. Tarter put
17 it. Usually you just don't get right from the source of the
18 detective investigating the case that this is the guy, this is
19 the bad guy, and the customer is the identity.

20 So that's -- that's about as robust notice as you can
21 get in an identity theft case. It leaves no doubt to any
22 reasonable person that the thief is Yochum and the victim is
23 Mr. Sponer.

24 Q. I'm going to show you another document. We've heard a lot
25 about ACDVs, but I don't know that we've actually looked at a

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1 number of them, so we're going to take a look at one or two.

2 THE CLERK: What's the exhibit number?

3 MR. SAND: This is Exhibit 50.

4 BY MR. SAND: (continuing)

5 Q. Do you recognize this document?

6 A. Yes.

7 Q. Can you explain to the jury what this is?

8 A. This is the ACDV we've talked so much about. This one is
9 dated -- sent on October 28, 2016, and the response date is
10 11-03-2016. This one is from Experian. And the ACDV dispute
11 reason is 103. And that means consumer claims true identity
12 fraud, account fraudulently opened, provide complete ID.

13 Q. So based on the information that Equifax had -- I'm sorry.
14 Based on the information that Wells Fargo had at this time
15 that we've reviewed, what is your opinion about what an
16 investigation should have concluded?

17 A. Well, the investigation -- they should have done an
18 investigation, which, in my opinion, they didn't.

19 Second of all, they should have looked at the
20 information they had readily available to it and the
21 information that is in their possession and concluded that,
22 yes, indeed, the accurate conclusion was Mr. Sponer was a
23 victim of identity theft, and therefore used this ACDV to
24 instruct Experian in this case that this information should be
25 deleted from his Experian file.

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1 And when there's a fraud dispute, because of those
2 2003 amendments, all fraud disputes, once they go to one CRA
3 and there's a response, it goes to all three CRAs. They did
4 that because they saw -- in the old days, when consumers had
5 to dispute to each CRA, and then they'd have to dispute to
6 each creditor, and they tried to streamline it so there would
7 be a loop, and fraud disputes and fraud information disputes
8 would circulate throughout the industry.

9 Q. Circling back to the iTop notes, to show you another page,
10 this is page 19 of the iTop notes, which is Exhibit 32.

11 So the ACDV we just looked at, do you recall the time
12 period roughly?

13 A. Late October when it was first sent, responded
14 November 3rd.

15 Q. Okay. Let's take a look. Do you see the bottom entry of
16 the iTop notes?

17 A. The very last one? Yes, I do.

18 Q. Can you read that for the jury, please.

19 A. (Reading) Received call from Detective Tugashov. He
20 states suspect plead guilty and sentencing is on 11-30, and
21 between now and then the suspect can change their mind; and,
22 if so, car would have to be kept as evidence for trial. He
23 will try and speak with DA and have them release to us. He
24 said he would let me know ASAP. And if DA approves, we can
25 get car as early as next Tuesday.

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1 Q. Was this evidence that Wells Fargo should have considered
2 in future ACDV disputes?

3 A. Absolutely.

4 Q. I'm going to show you what's been marked as Exhibit 60.
5 Do you recognize this document? There are two pages. I'm
6 showing you the first page right now.

7 A. Yes. I talked about the new systems that were put in
8 place around 2003.

9 THE COURT: This exhibit has not yet been received.

10 MR. SAND: 60.

11 THE CLERK: I'm sorry.

12 THE COURT: Go ahead.

13 THE WITNESS: This is the fraud blocking note. So I
14 said that when information is determined to be fraud -- and so
15 in this case TransUnion has followed the industry standards
16 and determined this is fraud, so they're sending the fraud
17 block notice to Wells Fargo Dealer Services. So that serves
18 as additional notice and a very robust kind of notice because,
19 you know, TransUnion is very expert at this. Credit reports
20 is what they do.

21 BY MR. SAND: (continuing)

22 Q. And so who would have put this document together?

23 A. TransUnion.

24 Q. And is there a field that shows where they sent it?

25 A. Yeah. They sent it to mail to credit and grantor at Wells

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1 Fargo Dealer Services, P. O. Box 1997, Winterville, North
2 Carolina.

3 Q. Let's take a look at page 2 of this document.

4 Can you explain for this jury what the
5 document -- explain to the jury what a fraud block notice is
6 and how this works within the industry, please.

7 A. It's that TransUnion has determined that this is fraud and
8 they want to block that information from showing up on his
9 credit reports. And so some accounts are opened fraudulently.
10 And so this one focuses on the Wells Fargo account. And it's
11 communicating that to -- TransUnion is communicating that to
12 Wells Fargo. And they're saying that they received the
13 documentation and notification from the above-referenced
14 consumer.

15 And it goes on to say, "We have permanently blocked
16 that account from our records as of November 13th, 2016." And
17 this is the important part of it in terms of, you know, making
18 it robust. They say, "Additionally, please take all the
19 necessary steps to ensure this account is not reported by you
20 or by a third party -- i.e. collection agency -- on your
21 behalf."

22 Because we've seen other accounts that the creditor
23 forwarded it to a collections agency, so then the bad news is
24 multiplying like rabbits on the credit report. So they're
25 foreseeing that as a possibility, too.

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1 Q. What is the date?

2 A. The date on the letter is November 13th, 2016.

3 Q. Let's take a look at Mr. Sponer's second ACDV dispute.

4 This is Exhibit 51. Do you recognize this document?

5 A. Yes. This is an Equifax ACDV to Wells Fargo.

6 Q. Okay. The jury has heard a lot about ACDVs, but I don't

7 think we've taken a long time to actually -- or a period of

8 time to explain exactly what they are. Can you explain to the

9 jury exactly what they're looking at?

10 A. Sure. An ACDV is an electronic format, but when you print

11 it out, this is what it looks like, Equifax's version. So

12 they're looking at the ACDV. You see that the date created is

13 on here and the response date. The date created is

14 10-30-2016. The response date is 11-16-2016. The dispute, as

15 you know by now, is 020, claims true identity fraud, account

16 fraudulently opened, initiate investigation.

17 Then you drop down just a little bit, and you'll see

18 FCRA relevant information, and that from Experian on

19 10-29-2016 is an example of what I was talking about, when one

20 fraud dispute has gone through Experian, then Experian sends

21 it through a system called e-OSCAR, so then Equifax as well

22 gets notice of it, and then Equifax gets the notice from

23 Experian, creates the ACDV to send to Wells Fargo saying

24 basically, "You need to investigate this."

25 Q. And the jury heard earlier today testimony from Wells

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1 Fargo's employees about the matching procedure that the ACDV
2 investigators do when they receive an ACDV disputing identity
3 theft.

4 Looking at the document, can you explain what that
5 means?

6 A. Sure. I mean, you see -- if you look in the middle top of
7 the document, you'll see the check marks. Thank you.

8 You'll see, that's when she said, "We looked. He had
9 the same name, the same Social Security number, and the same
10 date of birth." They checked those boxes. And then even
11 above that, you'll see that's where they checked the box
12 "modify as shown."

13 And if you look down below, this is so early in the
14 process, this account has not gone derogatory yet. If you --
15 you can see the type and rate, where it says I1. Can you put
16 your pen on there? Keep going across there. Right there.

17 That means it's an installment loan that's not late.
18 1 means you're not late, you're on time. So that's how early
19 in the process this is. And it doesn't have a past due
20 balance either. It's blank. It says that the current balance
21 is \$29,090.

22 Q. In terms of the matching procedure you described, is it
23 your opinion that is a reasonable procedure to investigate
24 identity theft?

25 A. No. It's -- it's so unreasonable because the thief is

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1 using his Social Security number and name, so you're not even
2 investigating the most important aspects of it. I think
3 accurate means correct in all cases.

4 And they're not even -- the most important thing
5 about the dispute is it's identity theft. Yet you heard that
6 they, instead of investigating, "Okay. Is that true? Is this
7 a product of identity theft?," no, they just matched the
8 identifiers, which are going to match anyway. So it's pretty
9 frustrating to listen that they do this.

10 Q. And what was the result of this dispute?

11 A. They basically instructed Equifax to keep the derogatory
12 information on, that this does belong to our plaintiff,
13 Matthew Sponer, and that, you know -- to keep this \$29,000
14 balance and this account on his credit report.

15 Q. And let's take a look. There are three fields. There's
16 "verified as reported," "modify as shown," "delete account"
17 and "delete fraud."

18 Why are there two different boxes for "delete
19 account" versus "delete fraud"?

20 A. Because with 9 million victims per year and being a
21 direct threat to the accuracy of credit reporting that it
22 deserves -- it's so common that it deserves its own category,
23 "delete fraud."

24 Q. And all the documents we talked about before this ACDV
25 that were in Wells Fargo's file, is it your opinion that those

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1 should have been relevant to their investigation of this ACDV
2 dispute?

3 A. Yeah. They should have had laser focus on the relevant
4 information that you just cited: the police detective, you
5 know, the other information they got from the police detective
6 at this point, the fraud block notice. All of that should
7 have been enough to persuade them to send back an ACDV saying,
8 "Yeah, this is a fraud. Please delete it from Mr. Sponer's
9 file."

10 Q. Let me show you one more entry out of the iTop notes.
11 This is page 16 of the iTop notes.

12 Let me ask this this way. Do you see any entries
13 here that should have been relevant for Wells Fargo's ACDV
14 dispute when plaintiff is disputing because of identity theft?

15 A. Sure. I think all of the ones that are referencing
16 Detective Tugashov and the thief, fraudster Jason Yochum, are
17 all relevant. So at first blush, I see four.

18 Q. Let's start with the entries on 12-13. There's a large
19 paragraph here. Can you describe for the jury what that says
20 and why that would be relevant to an ACDV investigation of
21 identity theft?

22 A. Well, it says that the car was impounded, so the car that
23 was fraudulently purchased was in police custody. They had
24 it. It was determined to be fraud. It was purchased by the
25 named -- the fraudster, Jason Yochum, and that he stole

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1 our -- Wells Fargo's -- customer's identity, that Mr. Yochum
2 is in custody, that the car is being held as evidence. The
3 sentencing has been rescheduled, so they won't get the car
4 back as quickly as they might have wanted. They have to wait
5 until probably January 2017, and the district attorney will
6 not release that vehicle until that time. And then they say,
7 "SAR," which means suspicious activity report, I believe,
8 "sent to Wells Fargo Dealer Services, fraud."

9 Q. Is there any better evidence of identity theft than a
10 detective telling the bank that this account is identity
11 theft?

12 A. I've done lots of identity theft cases, and I can't think
13 of any --

14 Q. All right.

15 A. -- anything better than this.

16 Q. And all of the documents that we've reviewed, is it your
17 testimony Wells Fargo should have been considering those
18 documents as part of its investigation of Mr. Sponer's ACDV
19 disputes?

20 A. Yes. It was incumbent that Wells Fargo would review this
21 information, because it's probably the most relevant
22 information in the dispute. And, unfortunately, they not only
23 did not consider it; they discarded it.

24 Q. And Mr. Sponer, do you recall, he filed more ACDV disputes
25 in 2016 than the ones we've looked at?

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1 A. Yes. We're just looking at a sample so far.

2 Q. Do you recall how many he sent to Wells Fargo?

3 A. I thought in 2016 there were four.

4 Q. I'm going to show you what's been marked as Exhibit 11.
5 And we spent a good deal of time on these letters, so I don't
6 want to go through it page by page, but have you seen this
7 document before?

8 A. Yes.

9 Q. Can you describe for the jury what this document is?

10 A. That's the direct dispute letter sent via certified mail
11 to Wells Fargo Dealer Services fraud department.

12 Q. And in this letter -- let me zoom out a little bit
13 more -- is it your opinion that Mr. Sponer provided
14 information that should have been relevant to Wells Fargo --

15 A. Yes.

16 Q. -- on future ACDV disputes?

17 A. Yes, he did. He was very thorough. I'm very impressed by
18 the job he did. Obviously his training as a computer
19 programmer is about problem solving; and when the first route
20 doesn't work, he'd try a different route. So this is one of
21 the early routes he tried, after trying his ACDV disputes.

22 Q. And we'll look at this page. It's the second page of
23 Exhibit 11. There are several attachments Mr. Sponer had to
24 this letter. There was an FTC identity theft affidavit, a
25 police report, and a notice to furnishers of information.

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1 Are those documents relevant to a bank's
2 investigation of identity theft?

3 A. Absolutely. I mean, this was part of those 2003
4 amendments was making sure -- trying to streamline it for
5 consumers. The FTC affidavit was a part of that. They
6 created that to make it easier.

7 Another grand irony here is on Wells' website, they
8 tell people who are afraid they're victims of identity theft
9 to do these first two things, to do a FTC identity theft
10 affidavit and to do a police report.

11 Q. Do you recall, did Wells Fargo remove the fraudulent
12 account from Mr. Sponer's credit report after receiving this
13 letter?

14 A. No.

15 Q. And this letter is dated January 19th. Why would this
16 letter on January 19th, 2017, be relevant for Mr. Sponer's
17 future ACDV disputes?

18 A. Because when the future ACDVs came in, disputes came in,
19 they would have known this information. They would have had
20 all those attachments, the FTC affidavit, police reports, and
21 all the other details he provided in this, which you've
22 already seen.

23 Q. Let me show you -- moving forward in time, I'm showing you
24 a letter, one of Mr. Sponer's letters. This is November 3rd,
25 2017. Mr. Sponer sent several direct disputes. Do you recall

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1 that?

2 A. Yes.

3 Q. And this is one of them. As of November 3rd,
4 2017 -- we'll go to the second page here -- the third page,
5 there are additional documents that Mr. Sponer submitted to
6 Wells Fargo. Do you see those?

7 A. Yes.

8 Q. Would these documents also be relevant for future ACDV
9 disputes?

10 A. Yes.

11 Q. And why would that be the case?

12 A. Well, we've already talked about the identity theft
13 affidavit and the police report. But here you have the
14 relevant passport pages. That shows which islands in the
15 South Pacific he was on during the time in question. So
16 that's very authoritative and compelling information. That's
17 official stamps of your location in time. So that would be
18 him trying another route. The other ones aren't working, so
19 we're trying this other avenue. And I consider those very
20 relevant, helpful.

21 And, by the way, I mentioned earlier, Wells Fargo has
22 those transactional data from his credit card, so they could
23 have matched those passport pages with the credit card
24 information they already had and said, "Yeah, I guess he's
25 telling us the truth."

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1 Q. And do you recall what Wells Fargo's response was to this
2 letter?

3 A. I remember that they didn't agree that they were going to
4 delete the account. I don't remember what wording they used
5 this time.

6 Q. They didn't delete the account, though?

7 A. No, no. All I remember is -- I'll stop right there.

8 THE CLERK: What was that exhibit number?

9 MR. SAND: This is Exhibit 53.

10 BY MR. SAND: (continuing)

11 Q. After Wells Fargo had received that letter -- I'm going to
12 show you another ACDV. We looked at the ACDV back in -- I
13 think it was October and November of 2016. Can you explain
14 for the jury what has changed about this account at this
15 point?

16 A. Okay. Oh, good point, yes. This is --

17 Q. Oh, I'm sorry. I'm showing you --

18 A. No, this is right. This is after the first one, because
19 the first one showed it had not even gone derogatory. But on
20 this one, it's 30 days -- I don't know if it's even 30 days
21 later.

22 If you go down -- and you'll see the "claims true
23 identity fraud" is the same dispute. But if you go down where
24 it says type and rate -- and I don't know if you can point
25 that out again. And it says -- I3 is what they had. That

Hendricks - D

1 means 90 days late, installment loan, 90 days. And now it's
2 I4, so it's climbing the ladder to 120 days later. And then
3 eventually it will go to 150. And then once it passes 180,
4 which happens later this year, it goes to charge-off status;
5 and those, of course, are a highly derogatory status.

6 Q. And do you recall if Mr. Sponer sent more ACDV disputes to
7 Wells Fargo in November and December of 2017?

8 A. Yes.

9 Q. Do you recall what Wells Fargo's response was to those
10 ACDV disputes?

11 A. It was more of the same. They compared identifiers. They
12 disregarded all the important information they had even in
13 their own possession, and they never investigated the
14 ACDV -- the ACDV operators never investigated whether it was a
15 product of identity theft.

16 Q. Do you recall how many ACDVs Wells Fargo received
17 disputing this fraudulent account?

18 A. I believe it was 10.

19 Q. Did Wells Fargo ever delete the account in response to an
20 ACDV dispute?

21 A. Never deleted the account, never conducted an
22 investigation.

23 Q. Okay. So we've talked globally about these ACDVs. What
24 is your opinion about Wells Fargo's investigation of
25 Mr. Sponer's ACDV disputes?

Hendricks - D

1 A. Well, that they -- like I said, this is their most
2 important duty in credit reporting accuracy, and they totally
3 disregarded that duty. They disregarded the notice that was
4 sent to all furnishers that you can't do this superficial
5 comparison and call it an investigation. You've got to do
6 something -- more of a searching inquiry or detailed
7 examination. So it was just different levels of disregard, up
8 and down the chart.

9 MR. PETERSON: Move to strike.

10 THE COURT: The objection is overruled.

11 BY MR. SAND: (continuing)

12 Q. And in part of your preparation to testify today, you
13 reviewed the deposition transcripts of Wells Fargo's
14 employees?

15 A. Yes.

16 Q. And that's the same testimony we heard in court today, I
17 believe?

18 A. And more.

19 Q. We heard that testimony about Wells Fargo's policies for
20 its ACDV dispute investigators. What is your opinion about
21 those policies?

22 A. They're -- I mean, the whole point is to have an
23 investigation that identifies inaccuracies and makes sure
24 they're corrected and removed. But these policies of refusing
25 to investigate an identity theft instead means that it's going

Hendricks - D

1 to ensure that inaccuracies persist.

2 And so under their policy or procedure, as we saw in
3 this case, an identity theft dispute to an ACDV operator is
4 not going to get corrected. The inaccuracy is going to
5 persist.

6 Q. In your experience -- experience in the industry, have you
7 ever seen a company that has procedures that prohibit ACDV
8 employees from investigating identity theft?

9 A. No. And it was stunning to see them here.

10 Q. What risks does Wells Fargo's ACDV investigations
11 procedures create for victims of identity theft?

12 A. It just means that there -- instead of being corrected
13 within a reasonable period of time, which is 30 days, 30 to 45
14 days, you're going to ensure that a lot of innocent people
15 become victims of chronic credit reporting inaccuracy.

16 Q. Now, Wells Fargo claims that it was waiting for
17 Mr. Sponer's Social Security card to proceed with its
18 investigation. In your opinion, was this reasonable to do?

19 A. No, it's not. And I've never seen that requirement. They
20 had plenty of information to identify that this was an
21 identity theft situation.

22 It's not about the identity of the person disputing
23 as much as about the inaccuracy of the information that
24 they're furnishing. And so it's hard for me to conclude
25 anything else but that this Social Security card requirement

Hendricks - D

1 was just a flimsy excuse for doing nothing.

2 Q. When you say you've never seen that requirement, I want to
3 unpack that. Do you mean you've never seen a furnisher
4 request a Social Security card in response to an ACDV dispute?

5 A. No. Sometimes you can request a Social Security card.
6 But, again, that's never an excuse -- if you don't get it, you
7 still have to do an investigation. That's where the strongest
8 duty is. And there's other ways of verifying identities. But
9 to not get a Social Security card does not amount to an excuse
10 not to do your duty to investigate.

11 Q. In your experience, are Social Security cards -- let me
12 ask this a different way.

13 Was Wells -- was it necessary for Wells Fargo to have
14 Mr. Sponer's Social Security card in order to determine
15 whether or not an identity thief opened this account?

16 A. No.

17 Q. And why is that?

18 A. Because they had the information from the police
19 detective. They had all the information from his file as a
20 Wells Fargo customer. They had his passport location and time
21 and location information.

22 I don't know. I'd rather not spend the rest of the
23 day listing all of it, but you get the idea, right?

24 Q. Let me ask you this. Do you have an opinion about why
25 banks like Wells Fargo would have substandard ACDV dispute

Hendricks - D

1 procedures?

2 MR. PETERSON: Objection, relevance.

3 THE COURT: Sustained.

4 THE WITNESS: Okay.

5 BY MR. SAND: (continuing)

6 Q. Did you have an opinion about why banks like Wells
7 Fargo --

8 MR. PETERSON: Objection, relevance.

9 THE COURT: Sustained.

10 BY MR. SAND: (continuing)

11 Q. Let's talk about the real world consequences of identity
12 theft and credit reporting errors. Mr. Sponer was the victim
13 of identity theft. Can you help the jury understand the
14 intersection of credit reporting and identity theft?

15 A. Right. I mean, I've talked about how it's a systematic
16 threat to accuracy. But when you're the victim of chronic
17 inaccuracy, there are several categories of problems you're
18 foreseeably going to endure. I wrote about these back in 2004
19 in the first edition of my book.

20 One of them is that you're going to be inaccurately
21 described as not creditworthy or less creditworthy than you
22 already are. You're also going to have to take time and
23 energy to try and fix a problem that was not of your making.
24 And when you have to devote time and energy to that, that
25 means you lose other opportunities that you would have taken

Hendricks - D

1 with your time.

2 Another one is that you -- any reasonable person that
3 knows they have this kind of derogatory information in their
4 credit report knows that it's senseless to try to apply for
5 credit. It would be like banging your head against the wall.
6 You're just asking for more frustration and humiliation
7 because you're going to get rejected. So another harm or
8 problem is that you're chilled from applying for credit.

9 And we've seen throughout the years, as I've listened
10 to victims tell their stories, that a lot of them have
11 sleeplessness and physical symptoms.

12 Another thing that happens here is that you lose
13 reasonable control over your personal information. You know,
14 what people care most about is having control they're supposed
15 to have. And that's the whole purpose of the law and the
16 policies is that you do have reasonable control. When you
17 have stuff that's not accurate, especially showing you're a
18 fraudster, and you can't correct it, you lose reasonable
19 control.

20 And I think another final category that sort of sums
21 it all up is -- and experts who are qualified have found this
22 in their research, is that there is emotional distress and
23 frustration and anger stemming from all these things; and
24 that's a real problem for consumers.

25 Q. So within those categories you described, can you explain

Hendricks - D

1 or help the jury understand the different factors used for
2 assessing the severity of the negative impact of a credit
3 reporting error?

4 MR. PETERSON: Objection. The witness isn't
5 qualified to to testify about the effect of --

6 THE COURT: I'm sorry?

7 MR. PETERSON: Well, may I ask a question in aid of
8 objection?

9 THE COURT: Sure.

10 MR. PETERSON: Mr. Hendricks, do you have any special
11 training in psychology?

12 THE WITNESS: No. This is not about psychology.
13 This is about the factors that I included in my expert report.

14 MR. SAND: We're not going that direction.

15 THE COURT: Go ahead.

16 BY MR. SAND: (continuing)

17 Q. Go ahead.

18 Do you want me to ask it again?

19 A. If you wouldn't mind.

20 Q. Sure.

21 Can you explain factors that can be used for
22 assessing the severity of a negative impact for victims of
23 inaccurate credit reporting?

24 A. Yes. I mean, the thing is -- one of them is the nature
25 and substance of the category of damage. So let's say if

Hendricks - D

1 you're shown to be 30 days late one time, but it happens,
2 that's not very serious, right. But if you're shown as a
3 charge-off that's a result of fraud, to me, the nature and
4 category is a very serious and very significant. So in terms
5 of gauging the severity of how bad this is, that's one factor
6 to consider.

7 Another is I talked about you have to spend time and
8 energy. Another factor is, well, how much time and energy do
9 you have to do? I don't think we have a good quantification
10 of how much time Mr. Sponer put into it, but to me it seems
11 like he spent a significant amount of time trying to fix this
12 problem.

13 Another factor, was there a reasonable expectation
14 that the problem is going to be solved? And I think, my
15 opinion, Mr. Sponer had that. He kept trying these different
16 routes, saying, "Okay. This is what's going to fix it." And
17 I think his expectation that it was going to be fixed was
18 reasonable.

19 And the last factor you want to consider is the
20 period of time over which the problem persisted. Is this
21 three or four months or is it 14 months? And so the more, the
22 longer it persists, the more severe it is, I think.

23 Q. You mentioned the first factor. I think you called it the
24 nature and substance of the category damage.

25 How derogatory was the Wells Fargo account on

Hendricks - X

1 Mr. Sponer's credit report?

2 A. It's one of the most derogatory -- charge-off is one of
3 the most derogatory statuses you can have on your credit
4 because it shows that the creditor gave up on you, not
5 even -- they just wrote it off.

6 MR. SAND: No further questions.

7 THE COURT: Cross-exam.

8

9 CROSS-EXAMINATION

10 BY MR. PETERSON:

11 Q. Mr. Hendricks, I want to start with your discussion about
12 Wells Fargo's policies and investigation. I believe you said
13 they failed to investigate; is that correct?

14 A. Yes.

15 Q. It's true, isn't it, that there's nothing wrong with two
16 different departments doing an ACDV investigation, correct?

17 A. I guess in the most general hypothetical sense, no, I
18 don't think there's anything wrong with that. Somebody is
19 doing it.

20 Q. So, for example, if the ACDV comes in and it says
21 "identity theft," it's proper or it wouldn't be unreasonable
22 for the ACDV operator to then involve the fraud department,
23 correct?

24 A. Yeah, if they were going to be -- if that was going to be
25 part of a reasonable investigation, sure. The more the

Hendricks - X

1 merrier you can get to get that reasonable investigation
2 accomplished, sure.

3 Q. And that's -- you reviewed the policies and procedures,
4 and that's Wells Fargo's policy and procedure, correct, when a
5 fraud -- when an ACDV comes in with an identity theft
6 complaint, that gets forwarded to fraud, correct?

7 A. I'm sorry. That's not consistent with my understanding of
8 all the material I reviewed in this case, and that's certainly
9 not what happened in Mr. Sponer's case.

10 Q. A Social Security card is a good way to confirm
11 that -- requesting a copy of the Social Security card is a
12 good way to confirm that you're talking to the person you
13 should be talking to, correct?

14 A. It depends. It's certainly one avenue to try. But you'd
15 have to keep in mind that Social Security cards can be made
16 fraudulently, just like other identification. It doesn't have
17 a photo on it, like a passport or a driver's license.

18 And, of course, I'm old enough to remember when a
19 Social Security card said, "This is not to be used for
20 identification."

21 Q. Do you remember when you and I talked before at your
22 deposition?

23 A. Yes.

24 Q. And I asked you then, "Isn't it therefore reasonable that
25 asking for a copy of the actual card is a good way for a bank

Hendricks - X

1 or any financial institution to confirm they're actually
2 talking to the right person?"

3 And you responded, "I think the question is, is that
4 a good way to do it, asking for it? Yes, I think asking for
5 it is a good way to do it."

6 Do you agree with that prior testimony?

7 A. Yes. I see no problem with asking for it.

8 The problem is when you fail to do your duty to
9 investigate because you don't get it, when you have plenty of
10 other information. That's very problematic, in my opinion.

11 Q. And there's nothing wrong with asking a consumer for more
12 information, correct?

13 A. I mean, again, generally, in a hypothetical situation, if
14 you're doing something to ensure accuracy, it's good.

15 Q. I'd like to have you look at Exhibit 501. Have you
16 reviewed this letter?

17 A. You're doing this so I have to take out my glasses.

18 Q. Sorry.

19 A. Yes. Yes.

20 Q. And the date on this letter is October 26th, 2016,
21 correct?

22 A. Yes.

23 Q. And you see that there's a request for additional
24 information.

25 I should back up. This follows the first letter from

Hendricks - X

1 Mr. Charne, correct?

2 A. Yes.

3 Q. And this, then, asked for some additional information,
4 correct?

5 A. Yes.

6 Q. And there's nothing unreasonable about taking that step in
7 the investigation, is there?

8 A. No.

9 Q. And you spent a fair amount of time in your testimony
10 discussing all of the information that Wells Fargo had in its
11 file.

12 Speaking about the first set of ACDVs -- I refer to
13 them as a set. I think you testified there were four ACDVs in
14 the fall of 2016?

15 A. That was my recollection, yes.

16 Q. Do you remember the date that Wells Fargo responded to the
17 last of those?

18 A. I don't -- I don't remember the exact date. I thought it
19 would be in December of 2016, mid to late December 2016.

20 Q. And I think the documents show it was December 3rd.

21 A. Oh, was it the 3rd?

22 Q. Would you disagree with that?

23 A. No. If you represent that to me, I have no reason to
24 dispute your representation.

25 Q. So taking that representation, then, as far as responding

Hendricks - X

1 to the first set of ACDVs, anything that Wells Fargo received
2 after December 3rd or anyone they talked to after December 3rd
3 wouldn't have been available to them in responding to that
4 first set of ACDVs, correct?

5 A. Okay, yes. I think I follow you.

6 So if -- in those first set of ACDVs, if the last one
7 was December 3rd, then they would only have available to it --
8 at least the easily available information that's already in
9 its own possession would be that which it received prior to
10 December 3rd.

11 Q. That's right.

12 And so you were looking at the iTop notes, for
13 example, so anything that happened after December 3rd wouldn't
14 be relevant to those first set of ACDV responses, correct?

15 A. I'm trying to be careful here because --

16 Q. I mean, they didn't have it, right?

17 A. Well, they didn't have it, but the information that came
18 after, some of that information, if Wells would have done a
19 reasonable investigation, they would have covered it. So
20 that's why I'm sort of hemming and hawing on that.

21 Q. But they didn't have the information?

22 A. They didn't have it because they didn't investigate. If
23 they had investigated it, they would have gotten it, and their
24 duty is to investigate, so --

25 Q. And you also testified about the letters that Mr. Sponer

Hendricks - X

1 sent beginning in January of '17 and the information that was
2 included with those, the fraud affidavit, the police report,
3 other information.

4 That wasn't information that Wells Fargo had when it
5 responded to the first set of ACDVs, correct?

6 A. That's correct. The first set of ACDVs, they did not yet
7 have the police report or the FTC fraud affidavit.

8 Q. And in review of all the documents, you're aware, aren't
9 you, that the Wells Fargo account was not the only derogatory
10 account on Mr. Sponer's credit report, correct?

11 A. That's correct.

12 Q. And any derogatory report can have negative impact on the
13 consumer, correct?

14 A. Yes.

15 Q. And the factors you were going through, those could be
16 related to any derogatory report on someone's credit, correct?

17 A. Yes. I mean, derogatory information causes problems and
18 harm to someone's creditworthiness. And I think we've seen,
19 there were other accounts on his credit report that were
20 derogatory, yes.

21 Q. And one other question. You said part of your -- the book
22 you wrote had to do with credit scoring, correct?

23 A. Yes, sir.

24 Q. Now, with a credit score, it's true, isn't it, that the
25 amount of an account that's in collections doesn't matter as

Hendricks - X

1 much as the existence of it?

2 A. That's generally true. But the past due balance is a big
3 scarlet letter, both within credit scoring and even
4 for -- when you apply for credit, like the underwriting,
5 underwriters like Fannie Mae and Freddie Mac in the mortgage
6 realm, they will scan the credit report for information. If
7 they see past due balances, it pops up as an immediate red
8 flag. So the past due balance hurts your credit score, but it
9 also hurts you whenever they do that kind of close look at
10 your.

11 Q. So when we talked before, I asked you, "In credit scoring,
12 does the amount of the delinquency matter or is it just the
13 existence of the delinquency?"

14 And you stated, "In FICO scoring, my best
15 recollection and best understanding is that the amount of the
16 delinquency, at least under the classic FICO models, is not
17 the issue. It's the existence."

18 Is that consistent --

19 A. Right. Because it gives the status of it, but the -- the
20 fact that there is -- and it's also the existence of a past
21 due amount. So it's the existence, but not the amount, when
22 it comes to strictly for credit scoring. The credit scoring
23 system just looks to see, is there a derogatory status like
24 collection or charge-off, and is there a charged-off amount or
25 a past due amount?

Hendricks - X

1 Q. And the police information -- it sounds like you carefully
2 reviewed those iTop notes; is that correct?

3 A. Yes, sir.

4 Q. And there wasn't initially a conviction, was there?

5 A. No. I mean, it took a few weeks, I thought.

6 Q. And there wasn't a guilty plea initially?

7 A. No. I think what we just went through showed that it took
8 three to four weeks to get it wrapped up. I can't remember
9 the exact amount of time, but it was more than two weeks,
10 because there was some -- the communications show that there
11 was expectation on Wells or at least a hope that they'd be
12 able to get the car back by -- before December, and that
13 didn't happen. It took longer than that.

14 Q. And there was a statement in the notes we looked at, even
15 after the guilty plea, it says, "The defendant could change
16 his mind," right?

17 A. Yes.

18 Q. So at that point no one had proven that Mr. Yochum had
19 stolen Mr. Sponer's identity, correct?

20 A. Um -

21 Q. As far as the pleas go.

22 A. Yeah, in terms of if you're going by a criminal standard,
23 then --

24 Q. Well, if --

25 THE COURT REPORTER: One at a time.

Hendricks - X

1 THE WITNESS: If you're going by a criminal standard,
2 that means -- I think it would mean beyond a reasonable doubt.
3 But under the FCRA it's a civil standard, so you have a duty
4 to investigate whether the information is accurate, not
5 whether the guy is guilty beyond a reasonable doubt.

6 BY MR. PETERSON: (continuing)

7 Q. But you testified that Wells Fargo had everything it
8 needed to know because it heard from the detective, so weren't
9 you referring to a criminal standard?

10 A. No. No. I was referring to sufficient information to
11 complete an investigation that would conclude that you should
12 not be reporting a fraudulently purchased car on Mr. Sponer's
13 credit report.

14 Q. But the police hadn't concluded their investigation yet,
15 had they?

16 A. But they had given enough information, which in my opinion
17 would have easily allowed any reasonable person, including
18 Wells Fargo, which is a person under the FCRA, to conclude
19 that he's a victim of identity theft.

20 MR. PETERSON: I don't have any further questions for
21 Mr. Hendricks.

22 THE WITNESS: Thank you.

23 THE COURT: Redirect?

24 MR. SAND: Yes, Your Honor.

25

Hendricks - ReD

REDIRECT EXAMINATION

BY MR. SAND:

Q. Mr. Hendricks, earlier when we were talking, you mentioned that the ACDV process has a filtering mechanism. Can you explain that a little bit further?

A. Sure.

When you dispute to the credit reporting agencies, they usually need to authenticate your identity before they go on. If they have some problems with your identity, they'll make you provide additional information to prove -- to authenticate you, to prove you are who you say you are. And so by the time they send the ACDV to a furnisher like Wells, they've already satisfied their authentication requirements.

Q. And so let me understand. Are you saying that by the time the ACDV arrives to the furnisher, it's already been filtered --

A. Yes.

Q. -- for purposes of identifying the consumer, that this is the person disputing it?

A. Yes. The CRAs have authenticated that consumer to their satisfaction.

Q. Now, you were asked about time periods of when Mr. Sponer received -- when Mr. Sponer sent the police report to Wells Fargo, and I think it was January of 2017.

A. Yes.

Hendricks - ReD

1 Q. Could Wells Fargo, prior to that, have reached out to the
2 police department to obtain the police report?

3 A. Well, sure. And they did reach out. I believe Wells
4 Fargo called the police. But the only thing their notes
5 reflected they were interested in doing was recovering the
6 car. They weren't interested in, you know, ensuring accuracy
7 for what they were reporting about Mr. Sponer.

8 Q. And Wells Fargo could have gotten a police report had they
9 wanted to do so?

10 A. In my opinion, yes.

11 Q. And I want to show -- go back to the iTop notes. You were
12 talking about the date that Wells Fargo learned the identity
13 thief pled guilty. We looked at the iTop note previously.
14 This November 3rd note, can you tell from that date the
15 suspect had pled guilty?

16 A. Yes. It looks like on November 3rd, suspect had pleaded
17 guilty.

18 Q. Thank you.

19 MR. SAND: No further questions, Your Honor.

20 MR. PETERSON: Your Honor, I believe that the
21 question about filtering was outside the scope of my cross.
22 I'd like to ask one follow-up question.

23 THE COURT: Sure.
24
25

Hendricks - ReX

RECROSS-EXAMINATION

BY MR. PETERSON:

Q. Mr. Hendricks, I want to make sure I understood correctly. Did you say that because the CRA has a filtering process, the furnisher should always just take the ACDV as true?

A. Well, no. I mean, there are no "always" or "nevers." There are no absolutes in credit reporting, just like there are always going to be errors in credit reports. So there are no absolutes, except there's the absolute there are no absolutes. That's why we have the reasonable standard, because it really depends on the circumstances.

MR. PETERSON: Thank you.

THE COURT: Anything else?

MR. SAND: Nothing further, Your Honor.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: Do you want this witness to be excused?

MR. SAND: That's fine with us.

THE COURT: Any objection?

MR. PETERSON: No objection.

THE COURT: Call your next witness.

MR. SOLA: Mr. Sponer rests his case.

THE COURT: Thank you.

Do you have witnesses available?

MR. PETERSON: We do, Your Honor, one we can start.

Braxton - D

1 We won't finish.

2 THE COURT: That's okay. Let's get started.

3 MR. FRANSEN: Defendant calls Megan Braxton.

4

5 MEGAN BRAXTON

6 called as a witness in behalf of the Defendant, having been
7 first duly sworn, is examined and testifies as follows:

8

9 THE CLERK: Please have a seat. State your name and
10 spell it.

11 THE WITNESS: My name is Megan Braxton, M-e-g-a-n
12 B-r-a-x-t-o-n.

13

14 DIRECT EXAMINATION

15 BY MR. FRANSEN:

16 Q. Good afternoon, Ms. Braxton. Can you tell -- explain to
17 the jury who your employer is.

18 A. Wells Fargo Auto.

19 Q. Okay. Wells Fargo Auto, is that a division within Wells
20 Fargo Bank?

21 A. It is.

22 Q. All right. Are there multiple divisions within Wells
23 Fargo Bank?

24 A. There are, such as home lending, card services, student
25 loans.

Braxton - D

1 Q. Okay. How long have you worked for Wells Fargo Auto?

2 A. I've been in Wells Fargo Auto for going on almost nine
3 years.

4 Q. Okay. And what is your job title at this point?

5 A. Head of credit bureau operations for Wells Fargo Auto.

6 Q. Okay. What other roles have you had with Wells Fargo Auto
7 in the past?

8 A. I was a business liaison consultant. I was also a
9 bankruptcy manager for about five years with the company.

10 Q. Now, the jury previously saw some testimony from Bets
11 Berg. Do you recall that?

12 A. Yes.

13 Q. Okay. Now, do you know why Bets Berg isn't here today?

14 A. I do.

15 Q. Can you explain it to the jury, please.

16 A. Yes. Bets Berg accepted a new role with Wells Fargo Auto
17 in quality assurance.

18 Q. Okay. Do you now have the job that she had when she gave
19 that testimony?

20 A. I do.

21 Q. And how long have you been the head of the credit bureau
22 operations department?

23 A. I've been head of credit bureau operations since April of
24 2019.

25 Q. Okay. Can you briefly describe your duties as head the

Braxton - D

1 credit bureau operations for Wells Fargo Auto?

2 A. I can.

3 So I have many responsibilities. One of those
4 responsibilities is ensuring that we -- when we receive an
5 electronic ACDV, also known as a dispute, we investigate that
6 dispute and we provide a response and send that back to the
7 credit reporting agencies within 30 days.

8 Another big function is data furnishing, which you've
9 heard of, also known as credit reporting, ensuring that we're
10 sending that transmission file out to the credit reporting
11 agencies.

12 Q. Okay. Now, do your duties then include managing the team
13 that's responsible for responding to ACDVs?

14 A. Yes.

15 Q. The jury heard and we all saw testimony from Montressa
16 Ebron, Colin Hollomon, Ashley Grier, and Brian Funsch. Do
17 those people work in your department?

18 A. Yes, they do.

19 Q. Now, we heard from one of plaintiff's experts about ACDVs,
20 but I wanted to ask you if you could please explain, generally
21 speaking, what an ACDV is from your perspective.

22 A. An ACDV is when a consumer finds something on their credit
23 report that they may disagree with, they will open up a
24 dispute with the credit reporting agencies, and they will send
25 over that electronic form of an ACDV to us, Wells Fargo Auto.

Braxton - D

1 Q. And then what does Wells Fargo Auto do when it receives an
2 ACDV?

3 A. Our ACDV team members will go ahead and perform an
4 investigation and provide a response and transmit that back
5 out to the credit reporting agency.

6 Q. How long do you have to respond to an ACDV?

7 A. We have 30 days to reply to an ACDV.

8 Q. And do you get the entire 30 days?

9 A. We do not. So typically we will respond within a 15-day
10 window of that 30 days.

11 Q. What happens if Wells Fargo Auto fails to respond to an
12 ACDV within the 30-day time frame?

13 A. If we fail to respond to an ACDV, then the credit
14 reporting agency will automatically delete that trade line,
15 also known as the customer's account.

16 Q. Okay. Now, we know from the testimony that one type of
17 dispute that you might receive is for identity theft, correct?

18 A. That is correct.

19 Q. Okay. What are some other types of disputes that your
20 department could receive?

21 A. We may receive a dispute in regards to late payments, also
22 change of address, a change of last name.

23 Q. Now, how big is the team that responds to ACDVs?

24 A. The team is 58 team members.

25 Q. Are they full-time employees or not?

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1 A. They are full-time employees.

2 Q. And to clarify, are these employees only responding to
3 ACDVs for Wells Fargo Auto?

4 A. That is correct. They only respond for Wells Fargo Auto.

5 Q. So does that mean that the other divisions of Wells Fargo
6 have totally separate teams for responding to ACDVs?

7 A. Yes. I have peers across the different products that
8 manage the same process as I do.

9 Q. All right. Now, can you give a brief summary to the jury
10 of how the ACDV response team is trained?

11 A. Yes.

12 So when an ACDV team member starts with Wells Fargo
13 Auto, they go through a three-week training. They learn about
14 ACDVs, the process, as well as how to handle an investigation,
15 and respond on to the dispute back to the CRA.

16 Q. About how long is the training process, would you say?

17 A. The training process is two weeks in classroom training,
18 not actually on the floor. They're going through the process
19 and learning about the dispute process within that training
20 room.

21 Q. And then after the training room, what do they do?

22 A. They move into their work homes, which is their desk. And
23 then they will work on the floor with the rest of the team, as
24 well as do side-by-side -- shadowing is what we call it, and
25 so they'll watch other team members that are handling ACDVs

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1 and shadow and follow and continue their training that way.

2 Q. And about how long is that entire process, would you say?

3 A. I would say it's roughly around 30 to 35 days that they're
4 in a continuous learning development training.

5 Q. Okay. Do they -- after they finish that training, do they
6 have any kind of follow-up testing that might happen?

7 A. Yes.

8 So we do annual certifications. And that typically
9 lasts from about the beginning of the year until about April.

10 Q. Thank you.

11 Now, turning specifically to the type of dispute
12 called an identity theft dispute, can you maybe give a brief
13 outline of the general process that the ACDV team members
14 would use when reviewing an identity theft dispute?

15 A. Yes.

16 So an ACDV team member, once they receive the ACDV
17 form, they're going to go ahead and look at the information
18 provided from the credit reporting agency. They're going to
19 look at what's in our system of record and compare it to what
20 we received within the ACDV.

21 Once they have looked at all of those factors and
22 looked at the system of record notes, they're going to provide
23 a response and their decision on what happened within that
24 investigation with the information provided back to the credit
25 reporting agency.

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1 Q. All right. Now, can the ACDV have information attached to
2 it?

3 A. Yes.

4 Q. Okay. Who attaches that information?

5 A. The consumer would attach that information when opening up
6 the dispute with the credit reporting agency.

7 Q. Okay. If information is attached, what do the team
8 members do?

9 A. So when they receive that ACDV from the credit reporting
10 agency with an attachment, they will also look at the attached
11 documents to see if there's anything in there that they need
12 to review.

13 Q. All right.

14 MR. FRANSEN: Can we pull up Exhibit 560, please.

15 BY MR. FRANSEN: (continuing)

16 Q. Okay. Ms. Braxton, do you see Exhibit 560 there in front
17 of you?

18 A. I do.

19 MR. FRANSEN: Give me a quick second to pull it up on
20 the big screen.

21 THE COURT: Do you see that on the screen?

22 THE WITNESS: I do.

23 THE COURT: You may continue.

24 MR. FRANSEN: Can we publish it to the jury? I
25 believe it's been admitted.

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1 THE COURT: 560?

2 MR. FRANSEN: I believe this was a supplemental
3 exhibit entered before trial.

4 THE COURT: Oh, we talked about this earlier. I
5 understand.

6 MR. SOLA: I just wanted to place an objection on the
7 record.

8 THE COURT: It's overruled. It's received.

9 MR. FRANSEN: Thank you.

10 BY MR. FRANSEN: (continuing)

11 Q. Exhibit 560, have you seen this document before?

12 A. I have.

13 Q. Okay. Can you describe, generally speaking, what we're
14 looking at?

15 A. We're looking at the procedure the ACDV members would
16 follow to perform their investigation of the dispute.

17 Q. Okay. And I believe you said that the first thing they'll
18 do is open up the account in iTop. Is that what your
19 testimony was?

20 A. Yes.

21 Q. And do we see that on this procedure?

22 A. We do.

23 Q. And can you maybe flag for everybody what you're looking
24 at?

25 A. I'm looking at the numeric No. 1.

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1 Q. Okay.

2 THE COURT: By the way, that's a touch screen, so if
3 you touch it --

4 THE WITNESS: Okay. That helps.

5 MR. FRANSEN: And can we look at the next page.

6 BY MR. FRANSEN: (continuing)

7 Q. And is this the remainder of that policy we were just
8 looking at?

9 A. It is.

10 MR. FRANSEN: If you wouldn't mind turning to the
11 next page.

12 BY MR. FRANSEN: (continuing)

13 Q. Now, can you explain -- first off, do you recognize the
14 document we're looking at?

15 A. Yes, I do.

16 Q. Can you explain what this policy is?

17 A. So this policy says "ACDVs accounts easily identified as
18 fraud accounts." This is another procedure internally that an
19 ACDV team member would use when reviewing a dispute for
20 identity theft.

21 Q. Okay. Do you have a general understanding about an
22 account easily identified as a fraud account?

23 A. I do.

24 Q. Can you explain that?

25 A. So when the ACDV is performing that investigation that I

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1 spoke of, when they're in the system of record known as iTop,
2 if they look at the notations from former -- other team
3 members within Wells Fargo Auto, they'll see notations from
4 other team members that may state that this account has been
5 determined fraud or they will see the fraud indicators, such
6 as a warning flag or any other key identifiers that are within
7 the procedure to look for.

8 Q. Okay. And to be clear, they are looking for if another
9 Wells Fargo person has identified it as fraud?

10 A. Correct.

11 Q. Okay.

12 MR. FRANSEN: Can we look at the next page.

13 BY MR. FRANSEN: (continuing)

14 Q. And, now, this is another procedure. Can you -- first
15 off, are you familiar with this procedure?

16 A. I am.

17 Q. Can you explain what this procedure is?

18 A. This procedure is ACDVs that are not easily identified as
19 fraud.

20 Q. Okay. Can you briefly summarize what the procedure is
21 when an ACDV team member receives an account that is not
22 easily identified as fraud?

23 A. Yes.

24 So following that same ACDV process receiving the
25 dispute, the team member would go into the system of record as

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1 well and be looking for those same indicators, notations,
2 identifying factors that another Wells Fargo team member would
3 have placed on the account in order to determine the status of
4 fraud.

5 Q. Okay. And on this procedure that we're looking at, can
6 you point out where it says the team members will look at the
7 account notes?

8 A. Yes. Let me do that. I'm trying to circle. It's not
9 working. So it's No. 3 on the procedure.

10 Q. And, actually, I believe No. 3 continues onto the next
11 page. Can you read what No. 3 says they're looking for?

12 A. It says, "Review the comments in iTop to determine if" --
13 and then it goes into bullet points.

14 Q. Can you read the bullet points out loud?

15 A. I can.

16 The account was opened fraudulently, and the second
17 is the account is currently under investigation.

18 Q. Would you turn to the next page?

19 A. Would you like me to continue?

20 Q. Yes, please.

21 A. A fraud package was sent to the customer and is awaiting
22 response. The account was reviewed and no fraud was
23 confirmed.

24 Q. Okay. Can you summarize now what they do, what the ACDV
25 team members will do after they've reviewed iTop for that

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1 purpose?

2 A. Yes.

3 So based off of one of those factors in the bullet
4 points, the team member will look at the notes and see if that
5 was easily identified and there in the comments. And if it's
6 not, they're going to go ahead and respond to the ACDV. If it
7 is, they're still going to respond to the ACDV and act
8 accordingly.

9 Q. So if Wells Fargo Auto receives an ACDV claiming identity
10 theft and the ACDV responder sees that a fraud investigation
11 is currently underway, what does this procedure tell them to
12 do?

13 A. It tells them to move forward with their investigation of
14 the ACDV and respond back to the credit reporting agency.

15 Q. What does it tell them to do with respect to the fraud
16 department?

17 A. It's telling them to allow fraud to continue their
18 investigation. There's nothing there for them to -- to do in
19 regards to the fraud investigation.

20 Q. And is that -- that's because the team member -- is that
21 because the team member has seen there is a fraud
22 investigation going on?

23 A. Correct.

24 Q. Okay. Now, how about a situation where there's no fraud
25 investigation going on and an identity theft dispute is

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1 received, and there's something, maybe an attachment or
2 something like that, that suggests something is going on?

3 A. So if they receive an ACDV with an attachment, like I
4 mentioned earlier, and it has attached documents that we need
5 to get over to fraud, we would forward that on to fraud.

6 Q. Okay. And does this policy instruct the team members to
7 do that?

8 A. Yes.

9 Q. Okay. Now, if -- if the fraud department completes its
10 investigation and has determined that fraud occurred, does
11 this policy describe what the fraud department then does?

12 A. Yes.

13 Q. And what is that?

14 A. The fraud department would reach out to the credit bureau
15 team directly to let us know that they've ended their
16 investigation and what the next step should be.

17 Q. And what would that next step be if fraud has
18 determined -- if fraud has determined -- sorry. What would
19 the next step be if the fraud department has determined that
20 the account is fraudulent?

21 A. So the next step would be the deletion of the trade line,
22 also known as the account. The team member with the credit
23 bureau would then submit an AUD to the credit reporting agency
24 the same day so that action can take place.

25 Q. And the AUD -- in that case, would the AUD result in

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1 deletion of the account?

2 A. It would.

3 Q. Okay. Do they -- so the fraud department, do they wait
4 for a new ACDV to come in?

5 A. They do not.

6 Q. Now, in this case the evidence has already been submitted
7 that Wells Fargo employee William Brady, who worked for the
8 fraud department, sent a letter to Mr. Sponer before there was
9 ever an ACDV received. Do you recall that?

10 A. Yes.

11 Q. So when the ACDV team members are responding to later
12 ACDVs, are they going to be aware that Mr. Brady has started
13 that investigation?

14 A. Yes.

15 MR. SOLA: I'll object. Calls for information she
16 doesn't have, beyond personal knowledge.

17 THE COURT: It sounds like she does have that
18 information.

19 Do you want to ask a question in aid of objection?
20 That might be helpful.

21 MR. SOLA: What's the basis for your knowledge as to
22 what those ACDVs operators knew?

23 THE WITNESS: Based off of system record information,
24 they would see the notation in the system that the account was
25 under fraud investigation.

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1 MR. SOLA: What's your basis of knowledge, knowing
2 they looked at that system of record?

3 THE WITNESS: I would not -- I'm not there to witness
4 what the team member would see, but if they're following
5 policy and procedure, that would be my belief, that they would
6 see that note.

7 THE COURT: Your objection is overruled.

8 Go ahead.

9 BY MR. FRANSEN: (continuing)

10 Q. In fact, why don't we look at Exhibit 32, please, page 20.

11 Now, just to remind everybody, what are we looking
12 at?

13 A. This is iTop comments.

14 Q. And iTop, is that what you mean by the account notes?

15 A. Yes, the system of record account notes.

16 MR. FRANSEN: Are you able to blow up the bottom one?

17 BY MR. FRANSEN: (continuing)

18 Q. That is, unfortunately, a little bit blurry. But if
19 you're able to, can you read what -- the date and read what
20 the entry says?

21 A. I will do my best.

22 The date is 10-26-2016. The note entry is by William
23 Brady.

24 Q. And then what does the entry say?

25 A. (Reading) Spoke with Matthew's attorney and faxed a packet

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1 to him to have Matthew fill out, and then his initials, WJB.

2 Q. Thank you.

3 So if an ACDV response comes in after October 26th,
4 2016, would the ACDV team member be able to learn that by
5 looking at this note?

6 A. Yes.

7 Q. Okay. And now I'd like you to look at Exhibit 33.

8 Now, I don't know that the jury has seen a document
9 that looks like this yet. And it's got a ton of information
10 on it. Can you describe just what we're looking at here?

11 A. So you're looking at a screen print from CDRS, known as
12 the Credit Dispute Resolution System. That system is the --
13 what the team member uses to respond to the ACDV that
14 transmits through e-OSCAR.

15 Q. So is this Wells Fargo's record of its ACDV response?

16 A. It is.

17 MR. FRANSEN: Can we zoom in on the bottom
18 screenshot.

19 BY MR. FRANSEN: (continuing)

20 Q. All right. Again, it's a little blurry. I apologize for
21 that.

22 Are you able to see where it says "date resolved"?

23 A. Yes.

24 Q. What does it appear that "date resolved" says?

25 A. I believe it's November 3rd, 2016.

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1 Q. And I believe the evidence has already been submitted that
2 the first ACDV response by Wells Fargo was November 3rd, 2016.

3 A. Yes.

4 Q. Is this that response?

5 A. Yes.

6 Q. Or, should I say, this is Wells Fargo's record of that
7 response?

8 A. That is correct.

9 Q. Okay. There's a block of text under -- towards the bottom
10 there. Can you -- can you make that out?

11 A. I'll do my best.

12 Q. It looks like it's written in maybe a shorthand.

13 A. That is correct.

14 Q. Are you able to interpret, generally speaking, the
15 shorthand that the team members use?

16 A. Yes.

17 Q. If you're able to, can you read that? If you're not able
18 to, let me know.

19 A. It's just a little bit blurry, so I can't see -- make out
20 the first -- let me take off my glasses.

21 Q. We can make it small again.

22 A. It's too small.

23 Q. Okay. Try it again. Sorry.

24 A. Okay.

25 (Reading) Verified ID, account info, CCC, XC, date of

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1 first delinquency, 10-22-16, 1 by 30, 1 by 60, 10-16, sent to
2 fraud, affidavit sent, no fraud found, images. And I believe
3 it says CC at the end.

4 Q. Now, when the ACDV responder is writing "sent to fraud,"
5 do you have an understanding of what they're trying to convey?

6 A. Yes.

7 MR. SOLA: Objection, Your Honor, lack of personal
8 knowledge, asking for the thoughts of another person she
9 hasn't spoken to.

10 THE COURT: As I understand it, she's translating
11 what these letters and initials mean. For that purpose,
12 overruled.

13 BY MR. FRANSEN: (continuing)

14 Q. I'll ask you a new question. Is "sent to fraud," is that
15 a common shorthand to use by an ACDV responder?

16 A. It is.

17 Q. And what does that normally mean?

18 A. It means that this account has been sent over to fraud.

19 Q. And by that, do you mean that the fraud department is
20 investigating the account?

21 A. I do.

22 Q. And the next set of words say "affidavit sent." Do you
23 have an understanding of what that normally would mean?

24 A. Yes.

25 Q. What is that?

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1 A. That the affidavit is sent to the customer.

2 Q. By "affidavit," are we talking about an identity theft
3 packet or something like that?

4 A. Yes.

5 Q. Okay. And then the last line that you read said "no fraud
6 found." Do you have an understanding what that phrase would
7 mean?

8 A. Yes.

9 Q. What is that?

10 A. At the moment of the investigation of dispute, the fraud
11 investigation has not been completed.

12 Q. Okay. Now, the date we looked at a minute ago on this was
13 November 3rd. And the date of William Brady's note in the
14 account notes was 10-26. Do you recall that?

15 A. Yes.

16 Q. So does this, in your mind, confirm that the ACDV
17 responder was following the policy?

18 A. Yes.

19 Q. Okay. All right. The first -- the first set of -- or the
20 first code you essentially deciphered for us, I believe you
21 said it was "verify ID"?

22 A. Correct.

23 Q. Okay. We've heard a lot about verifying ID, or I believe
24 they've called it matching -- other witnesses have called it
25 matching. Do you recall hearing about that?

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1 A. Yes.

2 Q. Okay. Can you explain why the ACDV responder is verifying
3 ID in this situation?

4 A. It's following policy and procedures. ACDV team members
5 are responsible for looking at the information that the
6 consumer provided to the credit reporting agency and the
7 information that was provided to Wells Fargo Auto, within our
8 system of record.

9 Q. Do they verify the ID every single time?

10 A. Yes.

11 Q. All right. Now, I believe we heard testimony of some
12 witnesses who thought that that's all that Wells Fargo did was
13 verify ID. Do you recall that?

14 A. Yes.

15 Q. Does this description suggest they did more?

16 A. Yes, it does.

17 Q. Okay. And is that because of the things we read about
18 checking to see that the fraud investigation was ongoing,
19 status of the fraud investigation?

20 A. That's correct.

21 Q. We heard some talk earlier about the options for response
22 codes. Do you recall that?

23 A. Yes.

24 Q. Okay. And it's a little -- it's too hard to read on this
25 thing we're looking at, but do you remember the -- do you

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1 recall the discussion about one such option was modify account
2 information, one was verify? Do you recall that?

3 A. Yes.

4 Q. And then there were two for delete?

5 A. Correct.

6 Q. Okay. Is there a -- are those codes that Wells Fargo
7 created or are those codes that came from the CRAs?

8 A. They're codes that came from the CRA.

9 Q. So the CRA is giving you the options of using these codes?

10 A. Correct.

11 Q. So there's no option -- or is there an option to use a
12 response code that would say something along the lines of
13 "Fraud investigation underway. We're not ready to respond"?

14 A. There is not a code for that.

15 Q. Okay. Is there something that you can do that at least
16 conveys information about the existence of a dispute?

17 A. Yes.

18 Q. Okay. And what is that?

19 A. That's a compliance condition code.

20 Q. Okay. Did we read a compliance condition code in the text
21 blocks you were looking at earlier?

22 A. We did.

23 Q. And what was that code?

24 A. If you see on the screen, it says "CCC." That's
25 compliance condition code, and it has XC after.

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1 Q. Can you -- and you don't have to know it by heart, but
2 what does the XC code mean?

3 A. The XC code means that we performed an investigation and
4 the consumer disagrees.

5 Q. Is that considered, in the industry, a dispute code?

6 A. It is.

7 Q. So if somebody reads a credit report and they see "XC" on
8 it, will they be conveyed information that says that the
9 account is disputed?

10 A. They will.

11 Q. Okay. Is there another dispute code that Wells Fargo can
12 use?

13 A. There is.

14 Q. What is that code?

15 A. That compliance condition code is known as XB.

16 Q. All right. And XB means what?

17 A. That the account is in dispute, in investigation dispute.

18 Q. Okay. Do you know if it's Wells Fargo's policy to always
19 report accounts that have been disputed by ACDVs with either
20 the XB or XC code?

21 A. Yes.

22 Q. And that was kind of a compound question. What is the
23 policy?

24 A. So the policy, the requirement is that we always have to
25 have a compliance condition code. While we're reviewing the

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1 ACDV received from the consumer, the account will report in an
2 XB. Once we perform our investigation and provide our
3 response determining -- based on that response, then we will
4 provide an additional compliance condition code, such as XC.

5 Q. Okay. Did you review all 10 of the ACDV responses that
6 Wells Fargo performed?

7 A. Yes, I did.

8 Q. In your recollection, did all 10 of those involve
9 reporting the XC code?

10 A. Yes.

11 Q. Does that mean that every time Wells Fargo responded to a
12 dispute -- I'm sorry -- every time Wells Fargo responded to an
13 ACDV, that it reported that the account was disputed?

14 A. Yes.

15 Q. And you're familiar -- you've read the ACDVs, and you also
16 heard and have read the testimony of Montressa Ebron, Colin
17 Hollomon, Ashley Grier, and Brian Funsch; is that correct?

18 A. That is correct.

19 Q. Based on that review, do you believe they complied with
20 Wells Fargo's policies and procedures that were in place at
21 the time?

22 A. I do believe that they followed our procedures.

23 Q. Okay. Now, the jury has heard that -- well, the jury has
24 heard that -- and seen that Wells Fargo did have information
25 in its account notes that the police had been in contact with

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1 Wells Fargo about the suspected identity theft criminal case.

2 Do you recall that?

3 A. Yes.

4 Q. Okay. Is there -- is there a reason why that's not enough
5 to delete the account from an ACDV response perspective?

6 A. The ACDV response team members are responsible for
7 investigating the dispute. The fraud team members would be
8 the ones that would handle the fraud investigation.

9 Q. Is there an exception in Wells Fargo's policy for the odd
10 time that it gets a call from the police about an identity
11 theft victim being -- or an identity theft perpetrator being
12 arrested?

13 A. So there's not an exception, if a team member were to see
14 those notes in the system, to do anything outside of the
15 policy and procedure that they followed.

16 Q. The policy and procedure, would that -- but if they saw
17 that, would the policy and procedure require them to report
18 that to fraud?

19 A. Yes.

20 Q. And then I believe you testified at that point the fraud
21 team will handle it?

22 A. That is correct.

23 THE COURT: Why don't we stop right here. There are
24 some things we need to take up this afternoon. This witness
25 is going to be here for a while in any event.

1 Members of the jury, I'm going to stop because there
2 is some other work I need to get done before the afternoon
3 ends. I'm going to let you go for the evening. We'll start
4 tomorrow right at 9:00.

5 Remember the precautionary instruction. The reporter
6 is still in the back of the courtroom, so don't read The
7 Oregonian. And I will see you tomorrow at 9:00.

8 Thank you very much. Have a good evening.

9 (The jury leaves the courtroom.)

10 THE COURT: You may have a seat.

11 Go ahead and step down.

12 THE WITNESS: Okay.

13 (The witness leaves the witness stand.)

14 THE COURT: Before we get to your halftime motions,
15 I need to make a phone call, so let me step off the bench for
16 about 15 minutes. I'll come back. We'll take your halftime
17 motions.

18 I have a draft of the jury instructions. It is not a
19 complete set of the instructions. There are some issues that
20 I'm still working on. And it is only a draft.

21 So just start working through them this evening, and
22 we'll be prepared to talk and adjust when your case is
23 completed, but it will give you an idea about where I'm
24 headed.

25 Okay. Let's take 15. Thank you.

Motion for Partial Judgment as a Matter of law

1 (A recess is then taken.)

2 (The Court, counsel, and the parties reconvene.)

3 MR. SAND: Mr. Sola is coming back.

4 THE COURT: We'll wait. Have a seat.

5 (Mr. Sola returns to the courtroom.)

6 THE COURT: Are you making motions?

7 MS. SMITH: I am, Your Honor. For the record, Julie
8 Smith on behalf of Wells Fargo.

9 THE COURT: Go ahead.

10 MS. SMITH: Defendant Wells Fargo moves for partial
11 judgment as a matter of law on several issues. I intend to
12 file this evening a memorandum. So at this point I only plan
13 to give the Court sort of the highlight reel of what will be
14 in the memorandum that we file tonight.

15 THE COURT: Do you want to wait until you file that
16 and then make your motion? I'm happy to do it either way, by
17 the way.

18 MS. SMITH: I think now is a good time. I think it
19 would make sense to reserve your ruling until you've had a
20 chance to read it, and I think it would also give plaintiff's
21 counsel a chance to, before I file it, have an idea what's
22 coming down.

23 So pretrial we filed a memorandum on the issue of the
24 very subsections of s-2(b), and one of those subsections is
25 (e). And in that supplemental memorandum we explained why the

Motion for Partial Judgment as a Matter of law

1 obligations in subsection (e) were not triggered in this case
2 as a matter of law, because those obligations are only
3 triggered when the furnisher makes actual findings. So the
4 first motion that we make is that there was no violation of
5 2(b)(1)(e) as a matter of law.

6 And it's clear that plaintiff intends on asking the
7 jury to find that sort of a violation, because it's included
8 in the proposed instructions.

9 The alternative to that motion, the first one, is
10 that the Court find as a matter of law that there was no
11 willful violation of 2(b)(1)(e).

12 And willfulness, we'll describe in our memorandum,
13 occurs when a furnisher adopts a reading of the FCRA that runs
14 a risk of error substantially greater than the risk associated
15 with a reading of the statute that was merely reckless.

16 And the argument is that -- that the position
17 presented -- or the reading that we have offered in this
18 supplemental memorandum that we filed is not objectively
19 unreasonable and, therefore, not a willful violation. I think
20 this will be easier to understand when you read the
21 memorandum. It's hard to explain it sort of in the abstract.

22 The other arguments relate to damages, the scope of
23 damages. And there are three issues that we're raising here.
24 And it's really more of a withdrawal of certain issues from
25 the jury -- well, except for the first one.

Motion for Partial Judgment as a Matter of law

1 The first one is really an argument I'm presenting
2 now for the purposes of preserving it, because it really would
3 require the Ninth Circuit to change its reading of the FCRA,
4 so I'll preface it with that, that I understand that you are
5 currently bound by the Ninth Circuit case law, but there is
6 some tension between the Ninth Circuit's case law on what the
7 FCRA allows -- how the Ninth Circuit interprets actual damages
8 for purposes of the FCRA with a Supreme Court case called *FAA*
9 *v. Cooper*, which was interpreting the Privacy Act. And the
10 phrase "actual damages" appears in the Privacy Act as well,
11 and the Supreme Court concluded that actual damages are
12 actually limited to pecuniary losses, so economic losses. So
13 the argument is that the FCRA does not allow for non-economic
14 damage awards, only recovery for pecuniary losses.

15 But in any event, at most, plaintiff can recover only
16 for emotional distress damages. And there is -- *Drew*, the
17 Ninth Circuit case I was just talking about, *Drew v. Equifax*,
18 said that a plaintiff can recover for emotional distress
19 damages in a FCRA case.

20 But what plaintiff has tried to do, both in the
21 Complaint and in the proposed instructions, is to expand
22 beyond emotional distress. The Complaint alleges not only
23 emotional distress, but separate categories of, I guess,
24 non-economic damages: lost opportunity to receive credit,
25 damage to reputation, or interference with plaintiff's normal

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1 and usual activities. In plaintiff's proposed instructions,
2 they expand on that and they list discomfort, time spent
3 dealing -- spent by plaintiff dealing with Wells Fargo's
4 inaccurate credit report, and it goes on, invasion of privacy.

5 So I would ask that a limiting instruction be given
6 to the jury that plaintiff can, at most, recover just
7 emotional distress damages, not for any of those other things,
8 which arguably might be subsumed, but shouldn't be listed
9 separately in the instruction that's been proposed.

10 And if loss of reputation, which is one of the things
11 that plaintiff is claiming, if it is a separate category of
12 non-pecuniary losses, plaintiff has not offered evidence
13 establishing an actual, cognizable loss of reputation.

14 And then the last category of motions that we have is
15 the problem with establishing the causal relationship between
16 Wells Fargo's investigations of the notices it received from
17 Equifax and some of plaintiff's claimed damages.

18 There's been a lot of evidence put on by plaintiff of
19 distress that preceded any of the ACDV responses, stress that
20 is attributable to things other than Wells Fargo's responses.
21 And the FCRA only allows the recovery of damages sustained as
22 a result of the failure to reasonably investigate the ACDV
23 notices. So it has to be tied to that particular -- the
24 responses that plaintiff got.

25 THE COURT: I don't know see how you get to a

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1 judgment as a matter of law on that issue. It may be at the
2 end I instruct the jury that "These are what you can consider
3 in reaching damages," but I don't see how you get to --

4 MS. SMITH: I understand your concern. I think what
5 I'm getting at is that we need a limiting instruction on this
6 issue.

7 THE COURT: Don't waste my time on that. We'll get
8 to that at the end of the trial. I want to know where you're
9 entitled to judgment as a matter of law now.

10 MS. SMITH: That one is hard to remove those from the
11 jury, because they're already swimming around. So I will
12 propose a limiting instruction on that issue.

13 THE COURT: Okay.

14 Anything else?

15 MS. SMITH: That's it. Thank you.

16 THE COURT: I'll look forward to reading your memo.

17 You don't need to respond now. I'll give you a
18 chance to look at their memo.

19 MR. SOLA: I might, Your Honor -- it just might save
20 us some work, because the limiting instruction on damages,
21 that's a summary judgment -- she's not claiming we didn't have
22 evidence to support our claims for damages. They're saying
23 now you can't seek those damages.

24 That should have been filed long ago. You know,
25 that's not -- again, that's not a JMOL. JMOL is "You did not

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1 present sufficient proof of your claims." And this is saying
2 "You don't have claims." So, you know, I don't think we
3 should even have to respond to that. That could have been
4 done through summary judgment. Same with --

5 THE COURT: Well, yeah, but just because something
6 isn't raised at summary judgment doesn't mean that it's
7 waived.

8 MR. SOLA: Well, I do differ, because that's why we
9 have deadlines for summary judgment.

10 THE COURT: A lot of people don't do anything;
11 summary judgment is never filed at all. Does that mean you
12 give up your negligence claim or your defense to a negligence
13 claim because you didn't file summary judgment on it? No.
14 You still get to fight that issue.

15 MR. SOLA: Okay. I think there's a difference
16 between fighting it because we haven't presented evidence and
17 fighting it because it's not recoverable, but --

18 THE COURT: I understand what you're saying. And
19 those are two different things, and those are both things that
20 I need to consider. But if they're saying just simply as a
21 matter of law -- which is why it's called judgment as a matter
22 of law -- because, one, there isn't any evidence of it, that
23 could be one point, or, two, it just isn't supportable by way
24 of law, those are both things I'm going to have to resolve
25 before we get to the end of this trial.

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1 MR. SOLA: I'm not clear. What's the third -- the
2 second one is you can't get certain damages, right? And
3 what's the third one?

4 MR. SAND: Causal.

5 MS. SMITH: Sorry. I closed out my notes.

6 Well, we raised the issue on subsection (e). Then we
7 raised an issue about actual damages, including only pecuniary
8 losses.

9 And then, at most, plaintiff can only recover for
10 emotional distress damages. This will be in the memorandum
11 that we file. And the causal relationship between the ACDV
12 responses and the damages that plaintiff is claiming, some of
13 the damages. I'm not moving as a matter of law on all of the
14 damages, some of the damages.

15 THE COURT: And that will go to your causation
16 instruction.

17 MS. SMITH: And I will present a limiting instruction
18 on that issue. I intend to file briefing on it as well.

19 THE COURT: Okay.

20 MS. SMITH: But yes.

21 MR. SOLA: Your Honor, I think there is one real easy
22 solution on the evidence of damages pre-ACDV, and we just say,
23 "You can only get damages starting at" -- we believe it would
24 be November 3rd, because that was the first time they
25 verified. And, actually, I put that in my trial memorandum,

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1 that we're only entitled to damages from November 3rd because
2 that's the date of the first violation.

3 MS. SMITH: Your Honor, I will circulate my draft
4 limiting instruction to counsel first.

5 THE COURT: Okay. So you're going to give us your
6 limiting instruction and your JMOL motions in writing.

7 And, as I indicated earlier, the plaintiff will have
8 an opportunity to respond.

9 MS. SMITH: Thank you, Your Honor.

10 THE COURT: Anything else?

11 MS. SMITH: Not from me.

12 THE COURT: Thank you very much. I look forward to
13 reading your memo. Really, I do.

14 MR. SOLA: We were just talking about scheduling,
15 Your Honor. And defendant is not sure when they will finish,
16 but in the event that they do finish Thursday, we would both
17 request that we do our closing arguments Friday.

18 THE COURT: Yeah, I don't see any way you'll get your
19 closings tomorrow. But maybe I'm wrong about that.

20 MR. PETERSON: When I'm looking at the clock and who
21 we've got left, I think we'll be fairly streamlined. I could
22 see a universe in which we finish sometime around 3:30 or
23 4:00. And at that late point, we'd like to close Friday.

24 THE COURT: Yes. We won't be done by then. Even if
25 you finish at 3:30 or 4:00, you're going to have all these

1 things you want to tell me before we get to closing arguments.
2 And, again, I can't wait to hear all those things, but I know
3 that the list is going to be comprehensive, particularly
4 because I just gave you the jury instructions, and I know
5 there's going to be a lot of debate about the jury
6 instructions before we get to closing. And I'm not going to
7 have time to do that until you're done with your part of the
8 case.

9 So you anticipate you might be able to finish by 3:00
10 or 4:00 tomorrow with your witnesses?

11 MR. PETERSON: I think so, Your Honor.

12 THE COURT: And you might have a rebuttal witness?

13 MR. SOLA: Maybe.

14 If I might, on the jury instructions, there are prior
15 FCRA cases in which there were jury instructions --

16 THE COURT: Mr. Sola, I'm going to give you all the
17 opportunity you need and want to have this same conversation
18 with me tomorrow around 3:30 or 4:00.

19 MR. SOLA: I just meant that -- well, I don't know if
20 you consulted those. I mean, I know when I did my second
21 trial with Judge Mosman, I mentioned that Judge Jelderks had
22 given jury instructions a few years earlier, and he said
23 something like, "Well, I would really like to see those as
24 guidance." That's all.

25 THE COURT: We looked at all of the instructions that

1 have been submitted.

2 MR. SOLA: Okay. I just meant like instructions from
3 another case.

4 THE COURT: Weren't those included in some of the
5 ones you submitted?

6 MR. SOLA: Well, some of them, yes, I do mimic,
7 because there are some that are given in any case.

8 THE COURT: So, again, I will look at anything you
9 want me to. So if you have instructions from Judge Jelderks
10 or Judge Mosman or any other judge, for that matter, that you
11 think are relevant and important and will help you or anybody
12 else, including the jury, reach the right decision in this
13 case, I'll certainly consider them.

14 MS. SMITH: Your Honor, at this point what would be
15 the most efficient way to present new proposed instructions?
16 Do you want us to -- obviously you want us to confer. But do
17 you want us to file them or submit them by e-mail? We'll
18 create a proper record eventually. But if there are just more
19 efficient ways to communicate then --

20 THE COURT: Well, other than the causation
21 instruction and the limiting instruction regarding damages, do
22 you anticipate submitting to this Court any other
23 instructions?

24 MS. SMITH: I don't know yet, because I haven't had a
25 chance to go through the draft that you prepared.

1 THE COURT: Well, assume I took all of your
2 instructions and said, "You're the best. We're going to use
3 all and only your instructions."

4 MS. SMITH: None come to mind, other than those two.

5 THE COURT: Those two, okay.

6 I mean, we might disagree on ones you submitted
7 before. I don't want you to submit another one because I said
8 no.

9 MS. SMITH: No, that's not what I mean. I don't
10 know. I haven't had a chance to review it.

11 THE COURT: Take a look at what we've done, and then
12 we'll have a conversation tomorrow. And I will consider again
13 any instructions you want me to consider. What I don't want
14 to do is be here until 9:00 tomorrow arguing about jury
15 instructions.

16 MS. SMITH: I don't think any of us want that.

17 MR. SOLA: I don't want that either. Thank you.

18 THE COURT: So back to your original question, you
19 can send them to us by e-mail, PDF format.

20 Do you want PDF or do you want Word?

21 THE LAW CLERK: Word.

22 THE COURT: Word.

23 Then if you want to get them filed as well so you can
24 preserve any objections if I tell you no, you'll have that in
25 the record.

1 MS. SMITH: All right. Thank you.

2 MR. PETERSON: Thank you, Your Honor.

3 THE COURT: Anything else?

4 MR. SOLA: No, Your Honor.

5 THE COURT: Okay. Have a good evening.

6 Thank you.

7 MR. SAND: Your Honor, can we get a take on the chess
8 clock?

9 THE COURT: Oh, you have plenty of time.

10 And the take is plaintiffs have 3:35:53. Defendants
11 have 7:34:01.

12 So, actually, out of a 20-hour set, you're only about
13 halfway through.

14 Okay. Thank you.

15 (The proceedings are adjourned on August 28, 2019 and
16 reconvened on August 29, 2019.)
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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-titled cause. A transcript without an original signature, conformed signature or digitally signed signature is not certified.

/s/ Nancy M. Walker

10-16-19

NANCY M. WALKER, CSR, RMR, CRR
Official Court Reporter
Oregon CSR No. 90-0091

DATE

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